

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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PATRICK SAGET, )  
et al., )  
Plaintiffs, ) Case No.  
vs. ) 18-cv-01599-WFK-ST  
DONALD TRUMP, President )  
of the United States, )  
et al., )  
Defendants. )

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Videotaped Deposition of LEE FRANCIS CISSNA  
Washington, D.C.

December 20, 2018

Reported by: Michele E. Eddy  
Job No. 450087

Magna Legal Services  
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1 Videotaped Deposition of Lee Francis Cissna held  
2 at:

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7 Mayer Brown, LLP

8 1999 K Street, Northwest

9 Washington, D.C.

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19 Pursuant to Notice, when were present on behalf  
20 of the respective parties:

21

22

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14 U.S. Citizenship and Immigration Services

15 David Voigtsberger, Videographer

16

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1 P R O C E E D I N G S

2 Washington, D.C.

3 December 20, 2018

4 - - -

5 THE VIDEOGRAPHER: Good morning.

6 This is the video deposition of Francis Cissna  
7 in the matter of -- in the matter of Patrick  
8 Saget, et al., versus Donald Trump, President  
9 of the United States, in the United States  
10 District Court for the Eastern District of New  
11 York.

12 Today is December 20th, 2018, and  
13 the time on my video screen is 10:03 a.m.

14 This deposition is being taken at 1999 K  
15 Street, Northwest, Washington, D.C., at the  
16 request of Mayer Brown.

17 The videographer today is David  
18 Voigtsberger of Magna Legal Services, and the  
19 court reporter is Michele Eddy of Magna Legal  
20 Services.

21 Will counsel please introduce  
22 yourselves and whom you represent.

1 MS. WEBB: Brantley Webb, from Mayer  
2 Brown, on behalf of the plaintiffs.

3 MR. CHRISTIAN: Marcus Christian,  
4 with Mayer Brown, on behalf of the plaintiff.

5 MR. MARUTOLLO: Joseph Marutollo,  
6 from the U.S. Attorney's Office, Eastern  
7 District of New York, for the government.

8 MR. DUGAN: Joseph Dugan, from the  
9 U.S. Department of Justice, Civil Division,  
10 Federal Programs Branch for the defense.

11 MS. VUONG: Sarah Vuong, with the  
12 United States Citizenship and Immigration  
13 Services for the government.

14 THE VIDEOGRAPHER: Will the court  
15 reporter please swear in the witness.

16 - - -

17 LEE FRANCIS CISSNA,  
18 having been duly sworn, testified as follows:

19 EXAMINATION BY COUNSEL FOR PLAINTIFFS  
20 BY MS. WEBB:

21 Q Good morning.  
22 A Good morning.

1 Q Would you please state your full  
2 name for the record.

3 A Lee Francis Cissna.

4 Q And your home address for the record  
5 as well.

6 MR. MARUTOLLO: Objection. Just --  
7 I just direct the witness to provide generally  
8 where he lives, what city.

9 MS. WEBB: That's fine.

10 A I live in Chevy Chase, Maryland.

11 Q And do you understand, Director  
12 Cissna, that you're here to testify today  
13 pursuant to a deposition notice and subpoena?

14 A I do.

15 Q Do you understand that you've just  
16 taken an oath so you're under oath just as if  
17 you were testifying in a courtroom?

18 A Yes.

19 Q Have you ever been deposed before?

20 A No.

21 Q Did you qualify that? Have you ever  
22 --

1           A       No, I have not been deposed before.

2           Q       So I'll just go over a few of the  
3       basic ground rules. So please answer audibly  
4       instead of shaking your head so she can get  
5       down the answer. Please allow me to finish my  
6       questions before you answer and I'll allow you  
7       to finish your answers before I continue  
8       questioning you.

9               If you don't understand a question,  
10      please ask me to clarify. Otherwise, I'll  
11      assume and the record will reflect that you  
12      understood the question. If I would like to  
13      amend an answer at any time, just let me know  
14      and we can go back and do that.

15              You can also take a break at any  
16      time. I would just ask that you answer the  
17      question that I have pending.

18              So your attorney will undoubtedly  
19      object from time to time, but those are for  
20      the record. So unless he instructs you not to  
21      answer, you should answer the question.

22              Is there any reason you can think of

1 why you can't give full and truthful answers  
2 today?

3 A No.

4 Q Are you presently suffering from any  
5 physical, mental, or other conditions that  
6 might affect your ability to answer truthfully  
7 today?

8 A No.

9 Q We always have to ask, are you  
10 taking any medication that might affect your  
11 ability to provide full and complete answers  
12 today?

13 A No.

14 Q Do you have any questions for me?

15 A No.

16 Q Okay.

17 So I would just like to get a bit of  
18 background from your life and your history  
19 first.

20 So, where did you attend undergrad  
21 school?

22 A I attended undergraduate school at

1 the Massachusetts Institute of Technology.

2 Q What was your major?

3 A I had two majors. I studied physics  
4 and, separately, political science.

5 Q What about in graduate school?

6 A I attended graduate school at  
7 Columbia University. I got a master's degree  
8 in international affairs. Subsequently I went  
9 to law school at the Georgetown University Law  
10 Center.

11 Q Do you remember approximately what  
12 year you graduated from law school?

13 A 1995.

14 Q And coming out of law school, what  
15 was your first job?

16 A My first job coming out of law  
17 school was as an associate at the law firm of  
18 Kirkpatrick and Lockhart, which now goes by a  
19 different name, in Harrisburg, Pennsylvania.

20 Q How long were you an associate  
21 there?

22 A Approximately two years.

1 Q What kind of work did you do?

2 A I principally handled federal  
3 environmental litigation.

4 Q And what did you do next?

5 A After working at Kirkpatrick and  
6 Lockhart for about two years, I got a job as  
7 an associate attorney at a law firm here in  
8 Washington, D.C., the firm of Steptoe &  
9 Johnson.

10 Q Steptoe, okay.

11 How long were you there?

12 A I was there, to the best of my  
13 recollection, between two and two and a half  
14 years.

15 Q And what kind of law did you  
16 practice there?

17 A There I principally handled matters  
18 relating to international trade law.

19 Q Okay. And after two, two and a half  
20 years, what was your next job after that?

21 A After working at Steptoe, I got into  
22 the United States Foreign Service, Department

1 of State, and accepted that position and went  
2 to foreign service training and then was  
3 posted overseas.

4 Q How long was the training for that?

5 A The training was, as I recall, about  
6 -- between six and eight months, all told.

7 Q What did it entail?

8 A Well, principally, the State  
9 Department training entailed language  
10 training. That was the bulk of the time, but  
11 there was a module of courses relating to the  
12 nature of the work in embassies overseas.  
13 Since I was going to be assigned -- since we  
14 were all entry level officers, we were almost  
15 certainly going to be assigned as consulate  
16 officers. We had a month or two long module  
17 on that subject and what consulate work  
18 entails. And then there was -- and that's  
19 about it. It was about eight months or so of  
20 training. Most of it was language.

21 Q Okay. What language did you study?

22 A I studied Swedish.

1 Q Swedish, okay.

2 And was that based on your choice or  
3 the department's choice?

4 A The department's choice, because  
5 that's where they decided to send me.

6 Q Okay. And then you said you were  
7 stationed overseas. So where were you  
8 stationed?

9 A So, first, I was sent on a temporary  
10 duty assignment to Haiti to the U.S. consulate  
11 at Port-au-Prince, and that was about, as I  
12 recall, about five or six weeks. This would  
13 have been in early 2000, sometime around  
14 March, April, May, sometime around there.

15 Q All right.

16 A Maybe earlier -- a little earlier  
17 than that, but it was sometime in the year  
18 2000. And then upon finishing that temporary  
19 duty assignment, I was sent -- I came back to  
20 Washington very briefly, and then went out to  
21 my permanent assignment, which was in  
22 Stockholm, Sweden, at the U.S. Embassy there.

1 Q And how long were you in Sweden?

2 A I was there a little over two and a  
3 half years.

4 Q So going back to your temporary  
5 assignment in Haiti, could you describe for me  
6 what your duties were while you were on  
7 assignment there?

8 A I was on some temporary duty. I was  
9 assigned to work on the immigrant visa  
10 adjudications line, as it was called,  
11 immigration -- the immigrant visa part of the  
12 consulate.

13 Q Okay. What sort of work did you do?

14 A I adjudicated immigrant Visa  
15 applications from Haitian nationals who were  
16 seeking -- or applying for immigrant visas to  
17 come to the United States.

18 Q And did you live in Port-au-Prince  
19 during those five to six weeks or somewhere  
20 else?

21 A I did.

22 Q And how was your experience there,

1 just generally?

2 MR. MARUTOLLO: Objection. You can  
3 answer.

4 A I loved my experience there. I  
5 thought it was a fantastic experience. I was  
6 sad to leave at the end of the six weeks. I  
7 got to know, you know, my colleagues at the  
8 Embassy very well during that six weeks. The  
9 nature of the work was very interesting. I  
10 got to learn some Creole language while I was  
11 there. I had to interview people. Overall  
12 it was a fantastic experience, short but  
13 memorable.

14 Q Okay. So, fast forward, you were  
15 stationed in Sweden. And what were your  
16 responsibilities there?

17 A I was the chief of the nonimmigrant  
18 visa section at the Embassy.

19 Q And what sort of duties did that  
20 role entail?

21 A I was the head of the group of --  
22 the group of foreign -- of State Department

1 employees who worked on the nonimmigrant visa  
2 applications, so temporary visa applications.  
3 I managed a group of roughly six, seven  
4 people, more or less, including locally  
5 employed foreign nationals, a couple American  
6 nationals, American citizens, and we were the  
7 group that handled all matters relating to  
8 nonimmigrant visa applications.

9 Q You said temporary visa  
10 applications. What sorts of reasons would one  
11 get a temporary visa application,  
12 nonimmigrant?

13 MR. MARUTOLLO: Objection. You can  
14 answer.

15 A You could be applying for a student  
16 visa. You could be applying for a temporary  
17 employment-based visa of some sort, for  
18 example, or you could be applying for an  
19 exchange visit or visa. Those are the  
20 examples of the sorts of visas.

21 Q Okay. What was your next job after  
22 that?

1           A     After that, I returned to the United  
2     States. I joined -- I became an associate at  
3     a law firm in Richmond, Virginia. The law  
4     firm of Kaufman & Canoles. It's a general  
5     practice law firm with a section devoted to  
6     only immigration law, so I was an associate in  
7     that group at that law firm.

8           Q     How long were you there?

9           A     I was there from -- I guess,  
10    probably two and a half years, something like  
11    that.

12          Q     And I take it, did you practice  
13    immigration law there in that practice?

14          A     Yes. There I only practiced  
15    immigration law.

16          Q     What kind of immigration law  
17    specifically?

18          A     The partner that I worked for  
19    handled a wide variety of immigration cases  
20    ranging from immigrant cases, nonimmigrant  
21    cases. Typically it would be -- they were  
22    employment-based cases.

1 Q Representing companies or  
2 individuals trying to work through the  
3 immigration process or something else?

4 A Both.

5 Q Okay.

6 A Both companies and individuals.

7 Q Okay. And then after two and a half  
8 years there, what was your next job?

9 A My next job was with the Department  
10 of Homeland Security.

11 Q And what was that job?

12 A I was -- in late 2005, as I recall,  
13 in October, as I recall, I got a job as an  
14 associate counsel in the Office of Chief  
15 Counsel in the United States Citizenship and  
16 Immigration Services.

17 Q And what made you want to take on  
18 that new job at the time?

19 A Well, I wanted to come back to  
20 Washington, D.C., where my family was, and  
21 remains to this day, and I had an strong  
22 interest in returning to government service,

1       which I had enjoyed during my time with the  
2       Department of State.

3           Q       And what were your duties as  
4       associate counsel, USCIS?

5           A       I would handle, you know, again, a  
6       wide variety of immigration-related legal  
7       matters. I didn't have a specific portfolio,  
8       but principally the sorts of things that would  
9       come up typically related to employment-based  
10      immigration, either immigrant or nonimmigrant.  
11      Those were typically the matters that I had  
12      dealt with. Also worked a lot on legislative  
13      initiatives that the agency was working on at  
14      the time.

15           Q       How long were you there in that  
16      role?

17           A       In that role I -- so starting around  
18      October 2005, I remained a USCIS employee  
19      until around October, November 2006.

20           Q       Okay. And then what did you do  
21      next?

22           A       Then I became an employee of the

1 actual Department of Homeland Security, the  
2 umbrella organization of the agency.

3 Q What was that position that you  
4 held?

5 A The position that I had -- held was  
6 Deputy Director of the Immigration Policy  
7 Group inside of the DHS Office of Policy at  
8 DHS headquarters.

9 Q So that wasn't a strictly attorney  
10 position anymore. You were doing other  
11 duties; is that right?

12 MR. MARUTOLLO: Objection. Vague.  
13 You can answer.

14 A Correct. It was not a legal  
15 position.

16 Q Did you have a particular portfolio  
17 in that position?

18 A There, too, the portfolio was --  
19 there was no one specific portfolio. It was  
20 very broad. It was -- the nature of the DHS  
21 Office of Policy is -- its purpose is to  
22 coordinate policy across all of the DHS

1 components, so the -- my portfolio necessarily  
2 involved immigration matters that would touch  
3 not just USCIS, but all of the components,  
4 CBP, ICE, any of the components that had  
5 anything to do with immigration.

6 Q Okay. How long were you in that  
7 role?

8 A In that role as the deputy, I was  
9 probably -- to the best of my recollection,  
10 about two years.

11 Q Okay. Then after two years?

12 A After two years, the individual who  
13 was the director, my superior, left the  
14 department. I became the acting director.  
15 This would have been sometime around late  
16 2008, so I became the acting director.

17 Q Okay. Late 2008.

18 And how long were you acting  
19 director?

20 A I don't recall.

21 Q Months, years?

22 A Well, the -- at some point in early

1       2009, the structure of the office changed. A  
2       person was appointed to be the Deputy  
3       Assistant Secretary in charge of that group  
4       and other related groups, and I don't recall  
5       exactly when, but at some point I became the  
6       Director of the Immigration Policy Group  
7       working under this Deputy Assistant Secretary.  
8       It was sometime in 2010, I think. I'm not --  
9       I don't recall right now.

10       Q       Okay. And so your title then was  
11       the -- I won't put words in your mouth -- was  
12       what?

13       A       When that bureaucratic change  
14       settled down, I -- my title was Director for  
15       Immigration Policy in the Office of Policy of  
16       the Department of Homeland Security.

17       Q       And was that a promotion of sorts  
18       from being acting director?

19                    MR. MARUTOLLO: Objection. You can  
20       answer.

21       A       Yes.

22       Q       And who was responsible for

1 promoting you?

2 A I don't know that any -- the -- my  
3 getting that title or that position was the  
4 decision of the then-Assistant Secretary for  
5 Policy, who would have been the -- who is the  
6 person who runs the entire Office of Policy.

7 Q Who was that at the time?

8 A I don't recall specifically who it  
9 was at the time that I got that position  
10 because it was a time of change between  
11 administrations and I don't remember when the  
12 new Assistant Secretary came in or the last  
13 one left.

14 Q And you said that was around 2010.

15 How long were you in that specific role?

16 A I was in that role up until I took  
17 my current role.

18 Q Okay. We may have our research  
19 wrong, but at some point were you working for  
20 a chairman under Senator Chuck Grassley in any  
21 of this?

22 A Yes.

1 Q When was that?

2 A I was detailed from the job that I  
3 had at the Office of Policy when I was  
4 director for the immigration group to Capitol  
5 Hill in, as I recall, roughly February of 2015  
6 and the detail lasted -- it was two years --  
7 ended up being two years and ended roughly  
8 February 2017.

9 Q Okay. Why were you put on that  
10 detail?

11 A I was put on that detail because, as  
12 best as I understand it, Senator Grassley  
13 requested a detail. Other committee chairmen  
14 had in the past, of Senate Judiciary committee  
15 chairmen in the past, had similarly requested  
16 details and been granted them.

17 Q What sort of issues did you work on  
18 for the Senator?

19 A During that time --

20 MR. MARUTOLLO: Objection. You can  
21 answer.

22 A During the time I was detailed

1 there, I offered technical assistance as a DHS  
2 subject matter expert on a wide variety of  
3 immigration-related issues that the Senator  
4 wanted assistance with relating to oversight,  
5 drafting the legislation, you know, the  
6 general matters falling under his chairmanship  
7 of the committee that touched on immigration.

8 Q You mentioned -- you said two years  
9 beginning approximately 2015. So that would  
10 take you to 2017.

11 A Correct.

12 Q And then -- so your current  
13 position, when were you first appointed?

14 A Well, my current position, do you  
15 mean being the Director of CIS?

16 Q Yes.

17 A I was nominated for the position, as  
18 I recall, sometime around April of 2017, and I  
19 was confirmed by the Senate for the position  
20 in October of 2017.

21 Q I apologize. Prior to that, were  
22 you acting director?

1           A     When I returned from Capitol Hill in  
2     February of 2017, I returned to the exact same  
3     job I had when I left two years earlier. So I  
4     returned to the position of Director of the  
5     Immigration Policy Group inside of DHS Policy.

6           Q     Okay.

7                   And from there you were nominated to  
8     your current position?

9           A     Correct. And during that entire  
10    time that I was nominated but not yet  
11    confirmed, I carried out my duties as I did  
12    before, in that same job that I had before I  
13    left.

14          Q     Okay. Thank you.

15                   How would you describe your current  
16    responsibilities as Director of USCIS?

17          A     I would describe them as being  
18    responsible for the executive direction of the  
19    agency.

20          Q     How many people report to you?

21                   MR. MARUTOLLO: Objection. Again,  
22    what was the question, how many people work --

1 MS. WEBB: How many people report to  
2 him.

3 MR. MARUTOLLO: Report to him.

4 MS. WEBB: Yes.

5 MR. MARUTOLLO: Objection. You can  
6 answer.

7 A The number of people who directly  
8 report to me, do you mean?

9 Q Yes.

10 A I would say -- let me think. Do you  
11 want ... about half a dozen.

12 Q And generally who are they, what are  
13 their subject matter areas?

14 MR. MARUTOLLO: Objection. Vague.

15 You can answer.

16 A One is the current acting deputy.

17 Another is the chief of staff. Another is the  
18 -- there is a counselor position in the front  
19 office who reports to me as well. The chief  
20 counsel of the agency and the chief of the  
21 Office of Policy and Strategy, as I understand  
22 the bureaucratic structure, also report to me.

1 I may have left some out, but those are the  
2 principal direct reports to me.

3 Q Okay. And who is the acting deputy  
4 right now?

5 A The acting deputy is Tracy Renaud.

6 Q And what about the chief of staff?

7 A The chief of staff is Lora Ries,  
8 spelled R-I-E-S. First name L-O-R-A.

9 Q And what about the counselor? You  
10 mentioned the counselor position in the front  
11 office.

12 A The counselor is currently Kaitlin  
13 Stoddard, K-A-I-T-L-I-N, S-T-O-D-D-A-R-D.

14 Q Thank you.

15 And what is she -- first of all, let  
16 me just ask you generally. We hear the term  
17 "front office" used a lot. How would you  
18 describe what the front office is in your  
19 agency?

20 MR. MARUTOLLO: Objection. And,  
21 again, I would just note that the witness is  
22 not a 30(b) (6) witness, but to the extent he

1 can answer in the capacity of a fact witness,  
2 he can answer it.

3 Q Just very generally.

4 A The front office is the group of  
5 individuals that surround the director's  
6 office and -- including people performing  
7 administrative tasks in the director's  
8 immediate suite. And people who discharge  
9 executive functions with regard to the whole  
10 agency, for example, the chief of staff, it's  
11 -- it's, I guess, best described as people who  
12 directly support the director and/or have  
13 functions that relate to the management of the  
14 entire agency.

15 Q Okay, thank you. That's very  
16 helpful. Okay.

17 So Ms. Stoddard, what are her --  
18 just very generally, what are her  
19 responsibilities?

20 A Ms. Stoddard is -- she assists me in  
21 a variety of ways. She directs -- manages and  
22 directs special projects and initiatives that

1 require some sort of front office involvement  
2 or role. Certain projects and initiatives cut  
3 across multiple directorates of the agency and  
4 it's preferable, in those types of situations,  
5 to have someone who is one level above, from  
6 an office that is one level above to  
7 coordinate the entities that are doing the  
8 project. So there's a number of projects  
9 she's involved in on that.

10 She transmits requests from me that  
11 may require coordination amongst multiple  
12 directorates, requests for information that I  
13 might have or requests for data, statistics,  
14 and at the same time she transmits to me  
15 information or concerns that she might glean  
16 from her work with the various directorates  
17 that I might not have insight into personally  
18 or directly.

19 Q Is she an attorney? Is it an  
20 attorney position or broader? I should --  
21 strike that.

22 Is she also an attorney?

1 A No.

2 Q Then you said chief counsel. Who is  
3 that right now?

4 A The chief counsel of the agency is  
5 Craig Symons, S-Y-M-O-N-S.

6 Q And who is the Chief of the Office  
7 of Policy and Strategy right now?

8 A Currently, the chief of that office  
9 is Kathy Nuebel Kovarik.

10 Q And you also mentioned some  
11 bureaucratic functions. Could you explain  
12 what you mean by that just a little more?

13 MR. MARUTOLLO: Objection. You can  
14 answer.

15 A In the -- you mean -- do you mean in  
16 the DHS front office?

17 Q No. I thought when you mentioned  
18 the various people, areas who report to you,  
19 you mentioned at the end, you thought there  
20 were some other bureaucratic areas or  
21 functions who report up to you.

22 MR. MARUTOLLO: Objection.

1       Objection. I don't think that's quite what he  
2       testified to, but you can answer.

3           A       In the DHS front office, there are  
4       administrative staff, but they do not report  
5       to me. They report either to the chief of  
6       staff -- I forgot. There's a deputy chief of  
7       staff as well in the -- in the front office.  
8       That position is currently being filled by  
9       Kaitlin Stoddard in an acting capacity, but  
10      the administrative staff that I just talked  
11      about typically reports to that person, the  
12      deputy chief of staff or the chief of staff  
13      herself.

14               Like I said, I may be forgetting  
15       other people in that front office, other  
16       roles, I should say, but I think that that's  
17       the bulk of it.

18           Q       Okay. Okay. Thank you.

19               Very briefly, before we start  
20       getting into documents, so you mentioned very  
21       broadly what you see your role as the  
22       director. How would you describe -- I know it

1 must vary substantially, but how would you  
2 describe your sort of day-to-day  
3 responsibilities at the agency?

4 A My day-to-day responsibilities vary  
5 widely depending on the day. Today I'm being  
6 deposed. On other days I could be -- I am  
7 promoting initiatives, changes, policy  
8 direction that I think makes sense for the  
9 agency or that the Secretary wants the agency  
10 to accomplish. I review and clear memoranda,  
11 documents, regulations, proposed regulations,  
12 final regulations, updates to field guidance.  
13 All manner of instruments for carrying out the  
14 policy for the agency that either I have  
15 requested the initiative or -- be initiated or  
16 that staff have on their own initiative  
17 proposed to me. I engage with the public. I  
18 attend meetings with stakeholders. I attend  
19 meetings with internal offices within the  
20 agency. I travel a great deal to the field  
21 offices that we have all around the country.  
22 Those are my typical duties.

1 Q When you said you review and clear  
2 memos and other documents, could you explain a  
3 little bit more what you mean by clear?

4 A As in any other agency, there is an  
5 executive secretariate that moves -- basically  
6 has the function of moving paper around. And  
7 any document, memo, letter, for example,  
8 correspondence to a member of Congress,  
9 anything that is leaving the agency that is a  
10 substantial document needs to have front  
11 office clearance. As we discussed before, the  
12 front office is that -- is that -- is the  
13 entity, including myself, the chief of staff,  
14 the deputy chief of staff, and the counselor,  
15 and detailer, so we may have subject matter  
16 detailers, you know, from the staff at any  
17 given time assigned to the front office to  
18 assist.

19 Those documents that the executive  
20 secretariate circulates, if they are  
21 substantial, will come through the front  
22 office and most are cleared, meaning that they

1 are given front office approval, without me  
2 having to -- without my having to get  
3 involved, if they're normal, routinely  
4 operational types of things.

5 If it's a letter to a member of  
6 Congress or a substantial policy memorandum,  
7 then the director would need to clear it.  
8 What that means is that the document would  
9 come to me in a formal manner and I would read  
10 the document.

11 I would make any edits I think are  
12 necessary and either send it back for further  
13 consideration or review or I would approve it,  
14 in which case in most -- in most instances  
15 that means I would sign it and then the  
16 document would go on to whatever its  
17 destination would be, either the member of  
18 Congress, the Secretary, or whoever.

19 Q And in the course of reviewing and  
20 clearing documents, would you ever consult  
21 statutes or other agency regulations?

22 MR. MARUTOLLO: Objection. You can

1 answer.

2 A Certainly, yes.

3 MS. WEBB: Let's go ahead and mark  
4 this as Exhibit 102.

5 (Exhibit 102 was marked for  
6 identification and attached to the deposition  
7 transcript.)

8 BY MS. WEBB:

9 Q This is -- in general, during the  
10 deposition, I will pass you -- I'll mark some  
11 exhibits for the record and you should review  
12 them and take as much time as you want to  
13 familiarize yourself with the document,  
14 whether it's a statute or email, anything like  
15 that. So take your time and just let me know  
16 when you're ready.

17 A Okay.

18 (Document review.)

19 I have reviewed the document.

20 Q And is this the federal statute U.S.  
21 -- excuse me, 8 U.S.C. Section 1254, titled  
22 "Temporary Protected Status"?

1 A Yes.

2 Q And are you familiar with this  
3 statute?

4 A Yes.

5 Q In the course of your duties at  
6 USCIS, do you work with this statute?

7 A Yes.

8 Q And just to make sure that you read  
9 the parts we're going to discuss, I want to go  
10 through in a little more detail a few sections  
11 of the statute.

12 So if you see under the second page,  
13 it's under bold, the designations. And then  
14 on page 3 it continues. Do you see the  
15 further subcategories that are (A), (B) and  
16 (C)?

17 A I do.

18 Q And (A) states, "The Attorney  
19 General finds that there is an ongoing armed  
20 conflict within the state and, due to such  
21 conflict, requiring the return of aliens who  
22 are nationals of that state to that state (or

1 to the part of the state) would pose a serious  
2 threat to their personal safety."

5 A Yes.

6 MR. MARUTOLLO: Objection. You can  
7 answer.

8 A Yes.

9 Q And then (B) states, "The Attorney  
10 General finds that there has been an  
11 earthquake, flood, drought, epidemic or other  
12 environmental disaster in the state resulting  
13 in a substantial, but temporary, disruption of  
14 living conditions in the area affected."

22 Are you familiar with that

1 subsection of the statute as well?

2 MR. MARUTOLLO: Objection. You can  
3 answer.

4 A I am.

5 Q And, then, finally (C), "The  
6 Attorney General finds that there exist  
7 extraordinary and temporary conditions in the  
8 foreign state that prevent aliens who are  
9 nationals of the state from returning to the  
10 state in safety, unless the Attorney General  
11 finds that permitting the aliens to remain  
12 temporarily in the United States is contrary  
13 to the national interest of the United  
14 States."

15 Same question, are you familiar with  
16 that subsection of the statute?

17 MR. MARUTOLLO: Objection. You can  
18 answer.

19 A I am.

20 Q And, then, there's just one  
21 additional subsection to take a look at. It's  
22 on the next page. Subsection (3), "Periodic

1       Review, Terminations, and Extensions of  
2       Designations."

3                   And under that it has three, again,  
4       three subparts, (A), Periodic Review; (B),  
5       Termination of Designation; and, (C),  
6       Extension of Designation.

7                   Are you familiar with that  
8       subsection of the statute?

9                   MR. MARUTOLLO: Objection. You can  
10      answer.

11       A       I am.

12       Q       Okay. So turning back to  
13      designations, does USCIS perform a role in  
14      determining whether a country will be given a  
15      TPS status under the subsection?

16                   MR. MARUTOLLO: Again, I just object  
17      that this witness is not a 30(b) (6) witness,  
18      but he can answer in his capacity as a fact  
19      witness in this case.

20       A       The decision whether a country  
21      should be designated for TPS is the  
22      Secretary's. The role of USCIS is to advise

1 the Secretary in making the most informed  
2 decision.

3 Q How does -- to your understanding,  
4 how does the -- how does the USCIS advise the  
5 Secretary in making an informed decision?  
6 What sort of -- well, let me back up.

7 Could you just walk us through the  
8 process that USCIS engages in, sort of from  
9 start to finish, in the designation prong of  
10 the statute to help advise the Secretary.

11 MR. MARUTOLLO: I'll just object,  
12 again, to the extent it calls for internal  
13 governmental deliberations. But given the  
14 court's order, the witness can answer the  
15 question.

16 A Well, I would start by saying first  
17 that USCIS isn't the only entity to advise the  
18 Secretary in making the most informed  
19 decision. USCIS is only one component that  
20 has a role in advising her on this subject.  
21 The DHS Office of Policy, the Office of  
22 General Counsel, the other immigration-related

1 components, ICE and CBP, all have a say in the  
2 recommendations that they might make to the  
3 Secretary, which may or may not be the same as  
4 the ones that USCIS makes.

5                   But with respect to CIS, the  
6 process, as I understand it, is that the --  
7 within USCIS, the Office of Policy and  
8 Strategy coordinates the drafting of a  
9 memorandum to the Secretary from me, from the  
10 director. And in that memorandum, the nature  
11 of the situation in the country in question is  
12 described, and the -- a recommendation is made  
13 to the Secretary regarding whether USCIS  
14 thinks the country should remain or be  
15 designated or remain designated or not be  
16 designated any longer.

17                   That memorandum, as I say, is  
18 coordinated by the Office of Policy and  
19 Strategy. There are other offices within CIS  
20 that have a role in that, including the Office  
21 of Refugee Asylum and International  
22 Operations. That coordinated memo is

1 presented to the director's office for final  
2 review.

3 Q Okay. And then -- but you said OPS  
4 coordinates the drafting of the memo.

5 Who in principal prepares the memo?  
6 Or who initially does the research that goes  
7 into the memo?

8 MR. MARUTOLLO: Objection to the  
9 extent it misstates his prior testimony as to  
10 who coordinates the memo, but you can answer  
11 the question.

12 A I don't know for certain. As best  
13 as I understand it, the Office of Policy and  
14 Strategy, which includes subject matter  
15 experts in this and every field of policy that  
16 the agency is engaged in, will consult with  
17 other subject matter experts, like I said, in  
18 the Office of Refugee Asylum and International  
19 Operations, and as far as I know the Office of  
20 Chief Counsel and other directorates within  
21 the agency -- other directorates in offices  
22 within the agency. I don't know that any one

1      person or entity is the chief scribe to draft  
2      it.

3                    Q      And could you describe your -- your  
4      specific role in the process.

5                    MR. MARUTOLLO: Objection. You can  
6      answer.

7                    A      My role is to review the final  
8      product or the final proposed memo that is --  
9      that comes out of this coordinated drafting  
10     process and determine whether it -- whether I  
11     feel comfortable signing the memo and  
12     transmitting that recommendation -- the memo  
13     and the included recommendation to the  
14     Secretary. And if I am, I sign it, and it  
15     moves on.

16                  Q      Are there differences between the  
17     process for an initial designation -- excuse  
18     me. Are there differences in the types of  
19     research and ground level process between the  
20     decision to designate versus the decision to  
21     extend or not extend?

22                  MR. MARUTOLLO: Objection. Vague

1 and calls for a legal conclusion as well, but  
2 you can answer.

3 A I don't know.

4 Q Since you've been director of USCIS,  
5 have you made any changes to the process of  
6 agencies as to prepare this -- these memos?

7 MR. MARUTOLLO: Objection. Vague.

8 You can answer.

9 A To the best of my recollection, I  
10 have made no changes to this process.

11 Q So you mentioned RAIO, Refugee  
12 Asylum and International Operations, that they  
13 perform the research on the country conditions  
14 for TPS. How -- how many people,  
15 approximately, are in RAIO, to your knowledge?

16 A Well, what I -- what I thought --  
17 what I think I said was that RAIO is consulted  
18 as part of the coordinated memo drafting  
19 process. I don't know with specificity what  
20 exactly they do. I know that within RAIO,  
21 there are subject matter experts on different  
22 countries and -- because we have international

1 operations. I know that in RAIO, they have --  
2 or RAIO, they have expertise in assessing  
3 country conditions, but I can't say that I  
4 fully understand the exact details of what  
5 their role is in doing the researching  
6 underlying the memo that is coordinated by  
7 OP&S, Office of Policy and Strategy. With  
8 respect to how many people are in RAIO, I  
9 can't say off the top of my head with -- I  
10 couldn't tell you with accuracy.

11 Q And are the employees in RAIO, are  
12 they sort of career civil servants? Do they  
13 have a high turnover or do they turn over from  
14 administration to administration?

15 MR. MARUTOLLO: Objection. Compound  
16 and vague, but you can answer.

17 A As far -- I know of no political  
18 appointee employees in RAIO. As far as I  
19 know, they are, indeed, all career civil  
20 servants and -- that continue to work from  
21 administration to administration.

22 Q So, other than helping with this

1 process to prepare these memos, what sort of  
2 other functions do the employees in RAIO --  
3 RAIO perform?

4 MR. MARUTOLLO: Objection. Vague.

5 But you can answer.

6 A RAIO has a very wide portfolio of  
7 duties. They -- as the acronym describes,  
8 they handle all refugee-related operations,  
9 which entails sending -- there's an  
10 established cadre of people, about 100, 150  
11 strong, that are constantly sent out around  
12 the world to interview prospective refugee  
13 candidates for resettlement. There are --  
14 there is the A part of RAIO, asylum. That is  
15 -- we have about 5-, 600 people that are  
16 asylum officers. Their responsibility is to  
17 handle, process, interview people who have  
18 asylum claims in the United States, which is  
19 the only place you can make an asylum claim.

20 The nature of the work that the  
21 refugee and the asylum officers do is very  
22 similar but not the same. They both

1 adjudicate protection claims based on the same  
2 fundamental principles of persecution, the  
3 five grounds of persecution, but the nature of  
4 the process is different for an asylum claim  
5 in the states versus a refugee resettlement  
6 application process overseas.

7 The I and the O of RAIO,  
8 international operations, that is a cadre of  
9 people, a couple hundred, 2- or 300 people, to  
10 the best of my recollection, that work in --  
11 either at overseas offices that we have in a  
12 handful of places around the world or support  
13 that work. And those offices sometimes do  
14 refugee work. At other times they will  
15 process certain types of cases and forms that  
16 we are able to receive overseas from either  
17 American citizens or aliens seeking some  
18 benefit overseas. So the entirety of RAIO's  
19 mission is very broad, and -- has worldwide  
20 reach.

21 Q So who in that -- who in RAIO then  
22 is working on the memos here? Is it a staff

1 in D.C. that's devoted to this kind of task?

2 MR. MARUTOLLO: Objection. You can  
3 answer.

4 A I don't know -- to the best of my  
5 understanding, the people in RAIO that work on  
6 these TPS memos are subject matter experts in  
7 a research arm of RAIO that supports the other  
8 functions I just described, the refugee,  
9 asylum operations and international  
10 operations. That, I believe, but I'm not  
11 certain, that that group reposes in  
12 Washington, D.C., somewhere, but it may be  
13 that they have people around the country in  
14 different remote work sites or other places.

15 Q Okay. How does -- how do the people  
16 in that research arm gain their expertise on  
17 these type of country condition issues?

18 MR. MARUTOLLO: Objection, to the  
19 extent it calls for speculation and also  
20 vague, but you can answer.

21 A I don't know.

22 Q Okay. Is it fair to say that the

1 agency relies on them for that type of country  
2 condition and expertise in various capacity?

3 MR. MARUTOLLO: Objection. Again,  
4 the witness is not a 30(b) (6) witness here,  
5 but you can answer to your personal knowledge  
6 as a fact witness.

7 A I don't have a complete  
8 understanding of the full breadth of what that  
9 research arm does, but it is my understanding  
10 that the work that they do does greatly  
11 support our overseas operations. They also  
12 assist with outreach to stakeholders, the  
13 media when they're asking us for statistics on  
14 anything ranging from refugee adjudication to  
15 the rate of fraud and asylum applications.  
16 These are things that they would be able to  
17 dig up pretty quickly, but more than that, I  
18 can't really say what the full extent of the  
19 nature of the agency's reliance on their  
20 services is.

21 Q Is it fair to say that the agency  
22 relies on their support in the TPS process?

1 MR. MARUTOLLO: Objection. Again,  
2 the witness is not a 30(b) (6) witness, but you  
3 can answer the question, to the extent it's  
4 not already been answered, but you can answer  
5 it.

6           A       I don't know that it would be fair  
7 to say to that. I would have to defer to the  
8 chief of the Office of Policy and Strategy who  
9 solicits their -- who I assume solicits their  
10 input, along with all the other offices, in  
11 the drafting of the memo or whatever other  
12 documentation relating to TPS is being  
13 presented to me for review.

14 Q Sure. It wasn't a trick question.  
15 I guess I was just trying to understand the  
16 agency relies on -- or excuse me -- the agency  
17 seeks their input in the process, seeks their  
18 help in the process. Okay.

19 So turning back to your role in  
20 reviewing the draft memos that are coming up  
21 from -- during -- excuse me, during the TPS  
22 process, what would happen if you were to

1 disagree with the assessment in the memo of  
2 country conditions?

3 MR. MARUTOLLO: Objection. Again,  
4 the witness is not an expert witness and I  
5 would instruct him not to answer any  
6 hypothetical questions, so I direct him not to  
7 answer that question.

8 MS. WEBB: Okay. We can -- we can  
9 get it out in the documents.

10 BY MS. WEBB:

11 Q To your knowledge, are there any  
12 sort of formal policies or guidelines in place  
13 that would govern how the RAIO employees  
14 conduct the country conditions research?

15 MR. MARUTOLLO: Objection. You can  
16 answer.

17 A I have no knowledge of any such  
18 policies or guidelines.

19 Q Do you know whether any other parts  
20 of USCIS, leaving aside other parts of DHS,  
21 other agencies, any other parts of USCIS  
22 contribute to the research that goes into the

1 memos?

2 MR. MARUTOLLO: Objection. Vague.

3 But you can answer.

4 A I don't know.

5 MS. WEBB: Let's take a break now  
6 before I get into --

7 MR. MARUTOLLO: Sure.

8 THE VIDEOGRAPHER: We're going off  
9 the record at 11:04.

10 (A brief recess was taken.)

11 THE VIDEOGRAPHER: We're back on the  
12 record at 11:12.

13 BY MS. WEBB:

14 Q If you would turn back to Exhibit  
15 102, please. And on page 4, subsection  
16 (3) (A), which is entitled "Periodic review,"  
17 which states, "At least 60 days before end of  
18 the initial period of designation, and any  
19 extended period of designation, of a foreign  
20 state (or part thereof) under this section,  
21 the Attorney General, after consultation with  
22 appropriate agencies of the government, shall

1 review the conditions in the foreign state (or  
2 part of such foreign state) for which a  
3 designation is in effect under this subsection  
4 and shall determine whether the conditions for  
5 such designation under this subsection  
6 continue to be met."

7 You mentioned you were familiar with  
8 that subsection of the statute, correct?

9 A Yes.

10 Q And what do you understand that  
11 provision of the statute to mean?

12 MR. MARUTOLLO: Objection to the  
13 extent the statute speaks for itself, but you  
14 can answer.

15 A As I understand it, the Secretary of  
16 Homeland Security, not the Attorney General,  
17 because that was changed by the Operation  
18 Homeland Security Act, the Secretary of  
19 Homeland Security is required to review the  
20 conditions in the country in question and at  
21 least two months before the end of the  
22 designation period to determine if the country

1 continues to meet the eligibility criteria set  
2 forth in 244(b)(1), the section that describes  
3 the various prongs for eligibility for TPS.

4 Q And when you say "review the  
5 conditions in the country in question," would  
6 that include -- would that be limited to  
7 conditions that prompted the initial TPS  
8 designation?

9 MR. MARUTOLLO: Objection. I don't  
10 know if that's a hypothetical question, but  
11 you can answer the question.

12 A As I see it, conditions means  
13 conditions. So the Secretary should review  
14 the totality of the circumstances, the  
15 universe of conditions in place in that  
16 country at the time of the review.

17 Q Okay. Including taking into  
18 account, perhaps, adverse conditions caused by  
19 intervening events between the originating  
20 designation event and the present or -- excuse  
21 me -- or at the time of review?

22 MR. MARUTOLLO: Objection. Calls

1 for a legal conclusion, is vague. Also calls  
2 for speculation, what the Secretary would do,  
3 but you can answer the question.

4 A As I understand the statute, the  
5 requirement is to consider all conditions in  
6 place at the time of the review, everything,  
7 yes.

8 Q Okay. So turning to the Haiti TPS  
9 designation. So you are aware -- you're aware  
10 that Haiti was designated for TPS in January  
11 2010, correct?

12 MR. MARUTOLLO: You have to answer  
13 verbally.

14 A I didn't even get a chance to  
15 answer.

16 Yes.

17 Q Did you have anything -- did you  
18 have any role in that designation?

19 MR. MARUTOLLO: Objection. I'm  
20 sorry, which designation are we talking about?  
21 I just missed it.

22 MS. WEBB: The 2010 designation of

1       Haiti.

2                    MR. MARUTOLLO: Sorry. You can go  
3       ahead and answer.

4                    A       Not that I recall. I was certainly  
5       aware of it at the time in 2010.

6                    Q       Okay. And you were -- you were at  
7       DHS at the time but not specifically working  
8       on TPS?

9                    MR. MARUTOLLO: Objection. You can  
10      answer.

11                  A       Correct. I was indeed at DHS  
12      headquarters at the time, but TPS was not  
13      something I normally dealt with.

14                  Q       Let me just pause and ask, during  
15      that time that you were at headquarters and  
16      before you were detailed to Senator Grassley,  
17      did you ever work on TPS issues?

18                  MR. MARUTOLLO: Objection. Vague.  
19      You can answer.

20                  A       I don't recall ever working on TPS  
21      issues during my -- during the years that I  
22      was up there. There were other people in the

1 group, the immigration group that worked on  
2 those issues. I was, of course, aware of TPS  
3 decisions and determinations as they were  
4 being made, but it was not something that I  
5 normally worked on during those years.

6 Q Okay. What about when you were  
7 working for Senator Grassley, did you work  
8 specifically -- did your work touch on TPS  
9 issues?

10 A I don't specifically recall TPS  
11 coming up in anything I ever did during my --  
12 during the time I was detailed there. It may  
13 very well have come up in questions the  
14 Senator may have had relating to oversight  
15 just generally of the department, but I don't  
16 recall myself having been involved in that  
17 issue area.

18 Q Okay. Okay. So going back to the  
19 January 2010 Haiti TPS designation, are you  
20 aware that the basis for that was the  
21 earthquake in 2010 that struck Haiti?

22 MR. MARUTOLLO: Objection. Vague

1 and calls for a legal conclusion. But you can  
2 answer.

3 A I'm aware of that, yes.

4 Q Okay. And you -- are you aware that  
5 that designation was extended in 2011 due to  
6 -- also to a cholera outbreak?

7 MR. MARUTOLLO: Objection. Vague.

8 Again, calls for a legal conclusion, but you  
9 can answer.

10 A That is my understanding, though I  
11 have no direct knowledge of that. I don't  
12 recall having read the 2011 Federal Register  
13 Notice or any of the subsequent -- subsequent  
14 ones, for that matter.

15 Q But you are aware that the  
16 designation and redesignation was extended  
17 several times since 2011, correct?

18 MR. MARUTOLLO: Objection to the  
19 extent -- well, objection. I think that  
20 assumes facts not in evidence, but you can  
21 answer. And vague, but you can answer.

22 A I am indeed generally aware that the

1 initial designation was renewed or extended  
2 several times, yes.

3 Q Okay. Moving forward to 2017, are  
4 you aware of whether the Haiti TPS designation  
5 was set to expire in July of 2017?

6 A I am aware of that, yes.

7 Q Do you recall how that was brought  
8 to your attention?

9 MR. MARUTOLLO: Objection. You know  
10 not to disclose anything from attorney-client  
11 privilege, but apart from that, you can  
12 answer.

13 A At the time I was still working at  
14 DHS headquarters and -- though, as I described  
15 it before, TPS was not something I normally  
16 dealt with. Nevertheless, I was aware that  
17 the designation was expiring soon and -- so  
18 the reason I was aware was because it was the  
19 subject of discussion just generally in the  
20 department and within the immigration group.

21 Q Okay. So in -- as of July, just  
22 remind me, I apologize, as of July 2017, you

1 had been nominated to the director, correct,  
2 but you had not yet been confirmed? Where  
3 were you in the process as of July?

4 A Yes, as I recall, I was nominated  
5 around April, and -- but I wasn't confirmed  
6 until October, so that entire time from  
7 February when I came back from Capitol Hill  
8 until October 6th or 7th, whenever it was I  
9 was sworn in, I was at DHS headquarters doing  
10 my normal job.

11 Q All right. Okay.

12 MS. WEBB: Let's mark Exhibit 103.  
13 (Exhibit 103 was marked for  
14 identification and attached to the deposition  
15 transcript.)

16 BY MS. WEBB:

17 Q Take your time.

18 A Okay.

19 (Document review.)

20 Okay, I've reviewed the document.

21 Q Okay. Do you recognize the email?

22 A I don't remember the email, but I

1 see it, yes.

2 Q Okay. Just a couple questions about  
3 who's who.

4 So, first, who is Gene Hamilton?

5 A Gene Hamilton at the time that this  
6 email was sent in April of 2017, was a  
7 counselor to the Secretary.

8 Q Okay. And James McCament?

9 A As I recall, at the time James  
10 McCament was the acting director of USCIS.

11 Q Okay. And Dimple Shah -- I'm not  
12 sure I pronounced that right --

13 A Dimple Shah at that time was the --  
14 I think she -- she was the acting head of the  
15 DHS Office of Policy. I don't remember her --  
16 the exact title that she had, but she was the  
17 senior official from DHS policy.

18 Q And what is she now?

19 A Currently Dimple is the head -- I  
20 don't know her exact title, but she is the  
21 head -- she's in DHS -- the DHS Office of  
22 Policy, and she's the head of the -- part of

1       DHS policy that relates to overseas relations,  
2       international relations.

3           Q       Okay.

4           A       Between the agency and foreign  
5       countries.

6           Q       Okay. Michael Dougherty.

7           A       Yes, Michael Dougherty at that time  
8       was and still is the Assistant Secretary for  
9       Immigration and -- Immigration Border and  
10      Trade Policy, I believe is his title. He's  
11      also -- he was then and is now in the DHS  
12      Office of Policy.

13          Q       Okay. And Carl Risch?

14          A       Carl Risch at that time, as I  
15      recall, was the Acting Chief of Staff at  
16      USCIS.

17          Q       Okay. And Ms. Nuebel Kovarik?

18          A       Kathy Nuebel Kovarik -- let me amend  
19      my -- when I mentioned Carl -- I can't say  
20      with certainty, but Carl Risch, Kathy Nuebel  
21      and Craig Symons, all three of them were at  
22      USCIS at the time.

1                   I don't know with precision what  
2                   their exact titles were at the time, this  
3                   being very early on, April, but I know that  
4                   they had -- they were at USCIS, but I don't --  
5                   I'm not certain that they had actually been  
6                   given a formal role or title at that time.

7                   Q        Okay. And when the email refers to  
8                   S1, just to clarify, is that the Secretary of  
9                   DHS?

10                  A        Yes, S1 is the typical way the  
11                   Secretary is referred to.

12                  Q        Okay, thank you.

13                  Okay. So the subject of the email  
14                   is TPS, correct?

15                  A        Yes.

16                  Q        And it mentions -- the email  
17                   mentions a "briefing on TPS likely on Monday."

18                  Do you by chance recall that  
19                   meeting?

20                  A        I do not recall that meeting, no.

21                  Q        Okay. So then it says, "In addition  
22                   to the general TPS document we had last week

1 (showing country, designation, expiration), he  
2 would like the following related to Haiti."

3 And "he," is that a reference to the  
4 Secretary, to your understanding?

5 MR. MARUTOLLO: Objection. You can  
6 answer.

7 A As I read the email, Mr. Hamilton is  
8 indeed referring to the Secretary.

9 Q Okay. And when it references "he  
10 would like the following related to Haiti," is  
11 that in relation to the Haiti TPS decision --

12 MR. MARUTOLLO: Objection.

13 Q -- to your understanding?

14 MR. MARUTOLLO: Objection. The  
15 document speaks for itself. Also calls for  
16 speculation, but you can answer.

17 A I don't know. I -- it's included in  
18 the email relating to TPS, but I have no idea  
19 whether the Secretary wanted that information  
20 for purposes of TPS or for some other reason.

21 Q Okay. Do you recall USCIS working  
22 to gather this -- the information listed here,

1 details on how many are on public and private  
2 relief, how many are school-aged kids and  
3 other general demographic data, how many have  
4 been convicted of crimes of any kind and how  
5 often they travel back and forth to the  
6 island, remittances, et cetera?

7 MR. MARUTOLLO: Objection to the  
8 extent it calls for internal governmental  
9 deliberations, but you can answer the  
10 question.

11 A As I recall, at the time that all of  
12 this was going on, in the spring of 2017, I  
13 was aware that USCIS was working on the TPS  
14 issue, which is appropriate for that agency  
15 but that -- I had no specific knowledge what  
16 the -- the specific things they were looking  
17 at or researching. So beyond, you know, what  
18 it says here, I -- I really don't know what  
19 they were doing in their -- in the development  
20 of whatever document they eventually came up  
21 with.

22 Q Okay. You mentioned in the spring

1 of 2017. At some point after that, did you --  
2 did you see this data or did you become aware  
3 that this data was being collected?

4 MR. MARUTOLLO: Objection.

5 Q Do you recall?

6 MR. MARUTOLLO: Compound and vague,  
7 but you can answer.

8 A I have a very vague recollection  
9 that at some later time I was aware that  
10 information like this had been collected. It  
11 may be that I gleaned it from news reports,  
12 but I -- I don't have any specific  
13 recollection of being presented with these  
14 statistics or being shown to me.

15 Q Okay. This group of individuals on  
16 the email, was this some sort of policy group,  
17 or why did Mr. Hamilton choose these  
18 particular recipients?

19 MR. MARUTOLLO: Objection. Calls  
20 for speculation.

21 Q To the extent that you know.

22 A I can't get into Mr. Hamilton's

1 head, but I can assume -- I would assume that  
2 he wanted to communicate with all relevant DHS  
3 headquarters and component agency entities  
4 that were working on the question of TPS  
5 extension or termination. So naturally USCIS  
6 would be included, and there they are. The  
7 DHS Office of Policy would be included, and  
8 indeed there they are. At the time I was a  
9 DHS policy official. So it seems like a  
10 natural, you know, universe of people to  
11 communicate with on this.

12 Q Okay. And towards the end of the  
13 email, he states, "Please keep the prep for  
14 this briefing limited to those on this email.  
15 If you need a specific data set and need to  
16 ask someone to pull it, please do not indicate  
17 what it is for. I don't want to turn this  
18 into a big thing where people start prodding  
19 and things start leaking out."

20 What is your understanding of what  
21 he meant by that?

22 MR. MARUTOLLO: Objection. The

1 document speaks for itself. Calls for  
2 speculation. You can answer.

3 A My understanding is that he wanted  
4 the discussion of the -- the preparation for  
5 the Secretary's brief to be kept to as small  
6 of a group as possible.

7 Q Was that a typical practice with  
8 preparing briefings for the Secretary, to  
9 limit it to very small groups, just the heads  
10 of the agencies?

11 MR. MARUTOLLO: Objection. Again,  
12 first that the witness is not a 30(b)(6)  
13 witness and, second, this is related to an  
14 email from Gene Hamilton, not from Mr. Cissna,  
15 but you can answer the question.

16 Q Just in his experience -- in your  
17 experience.

18 A In my experience going back years,  
19 going back all the way to Secretary Chertoff,  
20 it is not uncommon for a Secretary and his  
21 immediate counselors to choose to or to  
22 request that certain decisions the Secretary

1 is making or contemplating be -- that -- that  
2 the universe of people advising the Secretary  
3 on one decision or another be limited to a  
4 small group.

5 Q So with respect to the information  
6 requested that I listed out before, in your  
7 view, are any of those sets of data relevant  
8 to a decision to extend or terminate TPS?

9 MR. MARUTOLLO: Objection. Again,  
10 that calls for internal deliberations of the  
11 government. And, again, this is also beyond  
12 the scope of this witness. He's not the final  
13 decision-maker here.

14 You can answer the question.

15 A It could be. It could be. Under  
16 the section of the law relating to -- under  
17 section 244(b)(1)(C), this is on page 3 of  
18 Exhibit 102, the extraordinary and temporary  
19 conditions prong of TPS designation, it does  
20 say, "The Secretary -- the AG, rather -- "The  
21 Secretary finds that there exists  
22 extraordinary and temporary conditions in the

1 foreign state that prevent aliens or nationals  
2 of the state to return to the state in safety"

3 --

4 MR. MARUTOLLO: Hang on, just slow  
5 down for the court reporter.

6 A Sorry.

12 So, that last part, potentially,  
13 such information could be useful in  
14 considering whether allowing the population of  
15 whatever country to remain might or might not  
16 be in the national interest of the United  
17 States.

18 Q Okay. And I'll just ask you, with  
19 respect to each one, just to elaborate a  
20 little bit. So when he asks for details on  
21 how many are in public and private relief, in  
22 your view how would that relate to the United

1 States' national interest?

2 MR. MARUTOLLO: Objection. Again,  
3 that calls for speculation. I mean, I direct  
4 the witness not to answer to the extent it's a  
5 hypothetical question, but otherwise, you can  
6 answer the question.

7 A I think that -- it would not be  
8 unreasonable for a Secretary to consider  
9 whether, if a population -- if a large  
10 percentage of a population were on public or  
11 private relief, to consider that to be --  
12 whether allowing such people to remain is or  
13 is not in the national interest I think would  
14 be a reasonable thing to consider.

15 Q And then what about the second one,  
16 how many are school-aged kids and other  
17 general demographic -- well, let's just take  
18 how many are school-aged kids? How would that  
19 relate to that last part of the statute there  
20 as contrary to the national interest of the  
21 United States?

22 MR. MARUTOLLO: Again, same

1 objection. It calls for internal governmental  
2 deliberations. And it certainly calls for  
3 speculation, is a hypothetical question, but  
4 you can answer the question.

5 A As I read, I think the general point  
6 would be what is the demographic -- what are  
7 the demographic characteristics of the  
8 population in question. Whatever those may  
9 be, may or may not, may impact the  
10 consideration of whether allowing the people  
11 to remain is or is not a national interest. I  
12 think that, too, would be a reasonable thing  
13 to consider.

14 Q Would the number of school-aged kids  
15 bear specifically one way or another?

16 MR. MARUTOLLO: Again, objection.

17 Vague. Calls for speculation. This is,  
18 again, related to an email not drafted by  
19 Mr. Cissna. Mr. Cissna is not a 30(b) (6)  
20 witness. He's a fact witness. There's been  
21 no testimony that he's had any involvement in  
22 this decision in April -- in the spring of

1       2017, but -- again, it calls for internal  
2       government deliberations, but you can answer  
3       the question.

4           A       I have -- I don't -- I don't know  
5       how specifically -- whether the population of  
6       school-aged -- what the number of school-aged  
7       children in the population would have any  
8       bearing, but it might. I don't -- I don't  
9       know.

10          Q        Okay. Okay. And then the same  
11       question for criminal convictions of any kind.  
12       How in your view would that relate to the  
13       statutory requirement that you read for us?

14           MR. MARUTOLLO: Again, same  
15       objection. Calls for internal governmental  
16       deliberations. Calls for speculation. But  
17       you can answer the question.

18          A        I think the level of criminality of  
19       a population that has been granted TPS is  
20       something surely, again, that would be  
21       reasonable to consider in determining whether  
22       it's in the national interest to extend or not

1 extend.

2 Q Is it your understanding that if a  
3 TPS beneficiary is convicted of a crime, that  
4 they can be removed from the United States?

5 MR. MARUTOLLO: Objection. Calls  
6 for a legal conclusion. Also, goes beyond the  
7 scope of his testimony here as a fact witness,  
8 but you can answer to the extent you know.

9 A The statute does provide for  
10 termination of TPS status for people who  
11 commit certain crimes. I believe it's a  
12 felony or two misdemeanors, but -- so the  
13 short answer is yes, it is my understanding  
14 that certain types of criminality do render a  
15 person ineligible for TPS or make them lose  
16 their TPS status.

17 Q Okay. Is it your understanding that  
18 this data request was for a broader universe  
19 of all crimes, essentially?

20 MR. MARUTOLLO: Objection. Again,  
21 calls for speculation. Mr. Cissna did not  
22 draft this email and it also calls for

1 internal governmental deliberations. You can  
2 answer to the extent you know.

3 A All I know is what the email says,  
4 the requester wants information on how many  
5 have been convicted of crimes of any kind.

6 Q And, finally, the fourth request for  
7 how often they travel back and forth to the  
8 island, remittances, what is your  
9 understanding of how that would relate to the  
10 national interest of the United States?

11 MR. MARUTOLLO: Objection. I also  
12 think that misstates testimony from Mr. Cissna  
13 and also is -- seeks internal governmental  
14 deliberations, but you can answer the  
15 question.

16 A I don't know. It may be that the --  
17 whatever the answer is to that question would  
18 be determined to be in apposite to the  
19 determination. I can't say what Mr. Hamilton  
20 or the Secretary had in mind when requesting  
21 that information.

22 Q And in your view, would these

1 categories of information go to any provision  
2 of the statute other than the one that you  
3 identified in subsection (C)?

4 MR. MARUTOLLO: Objection. Again,  
5 calls for speculation that these items are  
6 even in connection with a determination about  
7 TPS designations, but you can answer the  
8 question.

9 A I don't know.

10 Q I understand that, I think, at some  
11 point you had responded to an inquiry from  
12 Senator Feinstein on this same topic and had  
13 stated that these sorts of categories of  
14 information would help increase the  
15 Secretary's understanding of how the TPS  
16 program operates. Do you recall that?

17 MR. MARUTOLLO: Objection. First,  
18 to the extent -- first, objection on the  
19 grounds of vagueness, but, second, to the  
20 extent there are documents that you have, this  
21 should not be a memory test for Mr. Cissna;  
22 but given that objection, you can answer the

1 question.

2 Q Fully understood it's not a memory  
3 test. Just do you recall that response at  
4 some point to Senator Feinstein?

5 A I don't recall that exact response,  
6 no.

7 Q Okay. Do you recall -- do you  
8 recall her making an inquiry to you in your  
9 office about these -- those specific  
10 categories of information?

11 MR. MARUTOLLO: Objection. You can  
12 answer to the extent you remember.

13 A You mean during the time that I was  
14 director or --

15 Q Yes, yes.

16 A No, I don't recall a specific letter  
17 from Senator Feinstein. I must have received  
18 hundreds of letters from members of Congress  
19 and other outside groups, but I can't  
20 specifically remember a letter to her.

21 Q Okay. Do you ever -- do you  
22 remember ever -- do you think that these

1 categories of information do have a bearing on  
2 how the TPS program operates generally?

3 MR. MARUTOLLO: Objection. Vague,  
4 and calls for a legal conclusion, but you can  
5 answer based on your own understanding as a  
6 fact witness in this case.

7 A You mean the categories in the  
8 Hamilton email?

9 Q Yes.

10 A They could. They might. It's --  
11 national interest is a very broad term. It  
12 could.

13 MS. WEBB: Okay. Let's mark Exhibit  
14 104.

15 (Exhibit 104 was marked for  
16 identification and attached to the deposition  
17 transcript.)

18 MR. MARUTOLLO: Do you have three  
19 copies?

20 MS. WEBB: Sorry. I have -- this  
21 was a surprise this morning.

22 MR. MARUTOLLO: That's okay.

1                   I'm sorry, what number exhibit is  
2                   this?

3                   MS. WEBB: 104.

4                   THE REPORTER: 104.

5                   A        (Document review.)

6                   I reviewed the document.

7                   Q        Just a few questions about this.

8                   So, do you recall this decision by  
9                   Secretary Kelly in May of 2017?

10                  A        I do recall it.

11                  Q        Did you have any involvement in the  
12                  decision that was made? Did you provide any  
13                  input?

14                  MR. MARUTOLLO: Objection to the  
15                  extent it calls for internal governmental  
16                  deliberations, but you can answer the  
17                  question.

18                  A        I don't have any specific  
19                  recollection of having any involvement in this  
20                  decision. As we discussed earlier, I was  
21                  certainly aware of it, but from what I recall,  
22                  USCIS was taking the lead on offering advice,

1 but not sole -- we didn't have the sole role.  
2 Other components were giving advice to  
3 Secretary Kelly on this subject, but I  
4 personally, I don't have any specific  
5 recollection of being involved in this  
6 decision.

7 Q Okay. Do you remember any  
8 discussions about this decision prior to it  
9 being made that you had?

10 MR. MARUTOLLO: Objection to the  
11 extent it calls for internal governmental  
12 deliberations, but you can answer the  
13 question.

14 A No, I don't recall any discussions  
15 that I had with anybody about this decision  
16 during that time.

17 Q Okay. Do you recall being present  
18 -- excuse me -- present at any meetings where  
19 this decision was discussed?

20 MR. MARUTOLLO: Objection to the  
21 extent it calls for internal government  
22 deliberations, but you can answer the

1 question.

2 A I don't -- truly, I do not  
3 specifically recall being in any meetings on  
4 the subject during this time frame, no.

5 Q Okay. Okay.

6 MS. WEBB: Let's mark this. I think  
7 I just have two. Let's see.

8 Here's one more.

9 MR. DUGAN: Thank you.

10 (Exhibit 105 was marked for  
11 identification and attached to the deposition  
12 transcript.)

13 BY MS. WEBB:

14 Q I'm also going to give you the memo  
15 in question.

16 (Exhibit 106 was marked for  
17 identification and attached to the deposition  
18 transcript.)

19 A (Document review.)

20 Okay, I removed -- I reviewed the  
21 documents.

22 Q Okay. So just starting with 106,

1 the memo, so what -- we've talked about the  
2 process in the memos that move through USCIS  
3 to the Secretary.

4 What is this document and where is  
5 it in the process that we discussed?

6 MR. MARUTOLLO: Objection. Vague  
7 and compound, ambiguous. You can answer.

8 A This document is the recommendation  
9 from USCIS to the Secretary for Sudan, TPS  
10 designation. This would be like the same  
11 document as is done for all the other TPS  
12 countries, this one done during Mr. McCament's  
13 time as acting director. So it's the same  
14 product that the director signs out and sends  
15 up to the Secretary.

16 Q And as we discussed -- as we  
17 discussed before, RAIO would provide research  
18 and input for this document; is that correct?

19 MR. MARUTOLLO: Objection. That  
20 misstates testimony, but you can answer to the  
21 extent you know.

22 A As best I understand the process,

1 even then, in the summer of 2017, RAIO had a  
2 role in the coordinated product that OP&S,  
3 Office of Policy and Strategy, put together.

4 Q Okay. Okay. And then turning to  
5 the email chain, so Mr. Dougherty on Tuesday,  
6 August 29th, 5:05 p.m., emails -- excuse me --  
7 emails James Nealon, with you copied, and  
8 Briana Petyo copied and Gene Hamilton copied,  
9 and says "Ambassador Nealon, Francis and I  
10 looked over USCIS/McCament's TPS packages for  
11 Sudan and South Sudan, and we agree with his  
12 recommendations."

13 First, let me ask you, do you recall  
14 this email chain?

15 MR. MARUTOLLO: Objection. First, I  
16 would just note that, again, this is related  
17 to TPS designations and packages for Sudan and  
18 South Sudan, that South Sudan and Sudan are  
19 not countries at issue in this litigation,  
20 which is only limited to Haiti, so I would  
21 object on the ground that this is unnecessary,  
22 conducted in bad faith, but you can answer the

1 question.

2 A I recall at the time these  
3 discussions happening. I didn't remember this  
4 email chain until I heard about it again some  
5 time ago, and now have reread it. So I do  
6 remember it now.

7 Q Okay. Okay. And why was Ambassador  
8 Nealon -- I don't know if I'm pronouncing that  
9 name right, I apologize.

10 A Nealon.

11 Q Why was he included in that email to  
12 your understanding?

13 MR. MARUTOLLO: Objection. Calls  
14 for speculation. The email is not from  
15 Mr. Cissna, but you can answer to the extent  
16 you know as a fact witness. Same objection  
17 that this is related to a determination that  
18 is for Sudan or South Sudan, which is not at  
19 issue in this litigation, but you can answer.

20 A At the time, as I recall, Ambassador  
21 James Nealon, former Ambassador James Nealon  
22 was -- had -- he had effectively become the

1 political head of -- actually, I don't know  
2 that he was a political appointee. He had  
3 become the de facto head of the Office of  
4 Policy. So it was appropriate that Assistant  
5 Secretary Dougherty would loop Ambassador  
6 Nealon into this issue.

7 The process was this document, the  
8 memorandum, like all the other memoranda that  
9 are going to the Secretary, like most other  
10 memoranda that are going to the Secretary, are  
11 reviewed by DHS component offices. So the  
12 Office of Policy might look at a memorandum,  
13 the Office of General Counsel, maybe other  
14 components at headquarters that have an  
15 interest in whatever the thing is.

16 So, as I recall, what would happen  
17 with these, and I don't think I saw many  
18 during the time that I was up there before I  
19 took my current job, these would be  
20 circulated, like memoranda like this one, the  
21 Sudan memorandum, would be circulated amongst  
22 DHS headquarter components for comment,

1 review, clearance, and if component offices  
2 had concerns or questions, then we would  
3 communicate back with the originating  
4 component through the executive Secretary of  
5 process and express those concerns.

6 So, here we see an exchange where  
7 Assistant Secretary Dougherty is telling  
8 Ambassador Nealon at the staff level, because  
9 in those days I was a career staff person, we  
10 had reviewed the document, and he was  
11 transmitting our conclusions.

12 Q Who is Briana Petyo?

13 A Briana Petyo --

14 Q At the time, what was her position?

15 A She was a career official in the DHS  
16 Office of Policy. She was working in the --  
17 at the time, in the DHS policy front office.  
18 She was -- as I understood her role, she acted  
19 as a sort of counselor to Ambassador Nealon  
20 and generally helped him manage the front  
21 office of the Office of Policy.

22 Q Okay. So then this email was going

1       from the Assistant Secretary of Immigration  
2       Border to OPS officials and to Gene Hamilton,  
3       who is counselor to the Secretary, correct?

4           A       Correct.

5           Q       And to you.

6           A       Right.

7           Q       At the head office.

8                   And does that exhaust the group of  
9       the DHS departments that this type of memo  
10      would have gone to?

11                  MR. MARUTOLLO: Objection. Calls  
12      for speculation. Vague. Again, this is in  
13      relation to the Sudan and South Sudan  
14      determinations unrelated to this litigation,  
15      but you can answer.

16                  A       No. I mean, typically, a memo --  
17      memos that are going to the Secretary are  
18      often, though I don't believe in every case,  
19      circulated generally at the department  
20      headquarters level. So the Office of General  
21      Counsel would see it. Here, as you see, the  
22      DHS Office of Policy. Perhaps the Office of

1 Civil Rights and Civil Liberties. It all  
2 depends on the nature of the memo.

3 Q Okay.

4 A So the addressees on this email are  
5 just people in DHS policy with Mr. Hamilton  
6 tacked on so ...

7 Q So there would be separate emails to  
8 those other departments potentially?

9 A That's what I would assume, yes.

10 Q Okay. So in the next email that you  
11 send on Tuesday, August 29, 2017, at 6:50  
12 p.m., you say that "Looking more carefully at  
13 the Sudan paper attached, it seems a bit  
14 confused." And then you quote some language  
15 from it.

16 On page 1 of the decision memo it  
17 says -- you highlight, "The draft package that  
18 was submitted to Secretary Tillerson's office  
19 for review assesses that the statutory  
20 conditions supporting Sudan's TPS designation  
21 continue to be met and recommends an 18-month  
22 extension of Sudan's designation for TPS."

1                   Then, you note at the bottom of page  
2        3, it says, you highlight again, "The review  
3        of conditions in Sudan indicates that it  
4        remains unsafe for individuals to return to  
5        Sudan and that the statutory requirements to  
6        designate a country for TPS under Immigration  
7        Nationality Act, Section 244(b)(1)(A), ongoing  
8        armed conflict, and under Section  
9        244(b)(1)(C), extraordinary temporary  
10      conditions, continue to be met."

11                  Then, you highlight again, "Because  
12      the conditions supporting Sudan's TPS  
13      designation persist, termination does not  
14      appear to be warranted."

15                  Then you write -- and then on page  
16      5, "Despite all the forgoing, the  
17      recommendation is to terminate TPS for Sudan,  
18      exclamation point."

19                  Then you add at the end, "The memo  
20      reads like one person who strongly supports  
21      extending TPS for Sudan wrote everything up to  
22      the recommendation section, and then someone

1 who opposes extension snuck up behind the  
2 first guy, clubbed him over the head, pushed a  
3 senseless body out of the way and finished the  
4 memo. Am I missing something?"

5 So my question to you is, what did  
6 you -- how did you understand that that --  
7 those inconsistencies in the memo had  
8 occurred? What had happened there?

9 MR. MARUTOLLO: Objection. Again,  
10 first, I would just note our objection on the  
11 grounds of deliberative process privileges  
12 that as that question is phrased calls for  
13 internal governmental deliberations. Second,  
14 I object to the fact that this is related to  
15 Sudan, which is not an issue in this  
16 litigation, Haiti is the country of issue in  
17 this litigation, and, third, I would object on  
18 the grounds that the document speaks for  
19 itself, but you can answer the question.

20 A Before I answer, I commend counsel  
21 in reading that with a straight face. But I  
22 would say the -- my point in making that

1 communication in that email was that the memo  
2 was internally -- it was not drafted well. It  
3 was -- it was just not drafted well. It was  
4 inconsistent, internally inconsistent. And I  
5 -- I have -- I have no idea why that happened  
6 or what caused the bad drafting to take place.  
7 My only point was that if something is going  
8 to be sent to the Secretary, the document has  
9 got to be right. It has to be well drafted,  
10 internally consistent, and it has to make  
11 sense. So I was just performing my duty as an  
12 Office of Policy staffer and basically  
13 expressing concern, the memo was just not  
14 ready for prime time and recommending that  
15 that be -- that the Office of Policy  
16 communicate that back to the agency that  
17 originated the document.

18 Q Right.

19 And you seem to emphasize that the  
20 memo had appeared to be drafted by two people  
21 with competing agendas. Is that correct of  
22 what you felt at that time?

1 MR. MARUTOLLO: Objection. First,  
2 again, with respect to calling for internal  
3 governmental deliberations and calling for  
4 Mr. Cissna's feelings on issues.  
5 Additionally, objection on the ground that the  
6 witness has just answered that question, but  
7 you can answer it again.

8           A     I had -- again, I have had, and even  
9     now, have no idea who drafted it or whether  
10    there was more than one person or ten people.  
11    I don't know. I was only making the point  
12    that however it came to be, the document was  
13    badly crafted and needed to be made  
14    consistent.

15 Q Okay. And in the prior email,  
16 Mr. Dougherty had stated that you and others  
17 agreed with the recommendation in the memo,  
18 correct?

19 MR. MARUTOLLO: Objection. Again,  
20 to the extent it calls for internal  
21 governmental deliberations, I would object,  
22 and also that the document speaks for itself,

1 but you can answer.

2 A Yes, that's what we said in the  
3 email, correct.

4 Q Okay. Do you recall at the time  
5 agreeing with the recommendation in the memo?

6 MR. MARUTOLLO: Objection. Again,  
7 to the extent it calls for his personal  
8 opinion, I direct the witness not to answer,  
9 under the deliberative process privilege at  
10 least how that question is phrased.

11 MS. WEBB: I'm asking just about the  
12 email. It says he agrees.

13 MR. MARUTOLLO: I think -- I think  
14 the question was, did you agree with the  
15 recommendation, correct me if I'm wrong, but  
16 if the question is do you agree with the  
17 recommendation for Sudan here, then I would  
18 instruct the witness not to answer, not only  
19 on deliberative process grounds but,  
20 obviously, it's outside of this case. We're  
21 not dealing with Sudan in this case. So that  
22 -- if that's the way the question was phrased,

1 which I think it was, then I would direct the  
2 witness not to answer.

3 MS. WEBB: I'm asking him whether he  
4 agreed in his capacity at the time at DHS  
5 headquarters, reviewing this memo? So it's  
6 not his personal feelings, really. It was  
7 sort of his official position that he took.

8 MR. MARUTOLLO: I still think --  
9 again, I realize there was a ruling yesterday,  
10 but the ruling yesterday did not touch on  
11 personal opinions. It touched on, based on  
12 Plaintiff's motion, what was reviewed, what  
13 the witnesses were instructed to do, facts  
14 that were asked for, who asked certain  
15 information. Even at earlier depositions,  
16 Plaintiffs have stated explicitly they're  
17 seeking discovery of facts and not -- I  
18 believe even at the first deposition, the  
19 Plaintiff's attorney noted they're not  
20 seeking, you know, views or recommendations  
21 and internal recommendations. So I think,  
22 again, the question as phrased I would

1 instruct the witness not to answer.

2 MS. WEBB: I guess we have to take a  
3 break. Let's go ahead and take a break.

4 THE VIDEOGRAPHER: Going off the  
5 record at 12:15.

6 (A lunch recess was taken.)

7 THE VIDEOGRAPHER: We're back on the  
8 record at 1:05.

9 BY MS. WEBB:

10 Q Okay. So just a couple more  
11 questions about the last exhibit, which is  
12 106, yes.

13 Okay. So, your attorney will be  
14 relieved that I'm not going to ask any more  
15 questions about your personal views on it, but  
16 I want to get just a bit of a better  
17 understanding of the process that happened  
18 after you had sent that email on August 29th.

19 So, after you sent your email at  
20 6:50 p.m., Mr. Hamilton sent an email at 9:35  
21 p.m. the same day saying, "Who can take care  
22 of this ASAP? She needs to sign this

1 tomorrow."

2 Who did you understand "she" to be  
3 there?

4 A I'm not sure because -- yeah, I  
5 don't know. Secretary Nielsen wasn't  
6 Secretary yet at the time, I don't think. I  
7 don't think she came in until later.

8 Q Okay.

9 A November, I think. So I'm not sure.

10 Q Would it be the acting Secretary  
11 then, possibly?

12 MR. MARUTOLLO: Objection. Asked  
13 and answered. But you can answer again.

14 A I don't -- I don't remember when  
15 Kelly left and when Duke came in, so it -- I  
16 don't know.

17 Q Okay. So, in general, the memo --  
18 feel free to look at it again because it's  
19 been a few minutes here -- would this memo  
20 inform the -- well, would the Secretary sign  
21 this memo?

22 MR. MARUTOLLO: Objection. You can

1 answer, to the extent you know.

2 A If the decision memo had a decision  
3 block at the end with options that the  
4 Secretary can choose from, just as a general  
5 matter, then, yes, the Secretary would circle  
6 whatever option they want and then sign their  
7 name next to it.

8 Q Okay. Okay.

9 So, but you're not sure whether  
10 Mr. Hamilton was implying that the decision  
11 memo needs to be signed tomorrow by the  
12 Secretary?

13 MR. MARUTOLLO: Objection. You can  
14 answer.

15 A I think that's what -- what he's  
16 implying.

17 Q Okay.

18 A The -- that's what it appears he's  
19 applying -- implying, yes.

20 Q Okay. So, then, at 9:49 p.m. on the  
21 same day, August 29th, Ms. Petyo sends an  
22 email with some acronyms that I'm going to ask

1 you about, but "PLCY only got PDFs and  
2 clearance. We can do but would need CIS  
3 originals and would probably need to be  
4 re-signed by CIS given one of the key pieces  
5 we will actually need to change to make sure  
6 it's consistent is the first part where you  
7 mention this draft relies on the assessment  
8 sitting on Tillerson's desk and CIS rec. which  
9 don't align in this draft."

10 So, just quickly, what did you  
11 understand what PLCY to refer to?

12 A PLCY means the Office of Policy.

13 Q And CIS is USCIS?

14 A Correct.

15 Q What did you understand her to mean  
16 generally in her email there?

17 A She is saying that if the memo in  
18 question is to be amended in any way in  
19 response to the comments I raised or whatever  
20 comments anybody else has, then we, the DHS  
21 Office of Policy, would need Microsoft Word  
22 text in order to be able to edit it. This

1       document evidently only came as a PDF so it  
2       couldn't be edited, and that's the substance  
3       of her remarks.

4           Q        Okay. And what about her remark  
5       that it probably would need to be re-signed by  
6       CIS?

7                   MR. MARUTOLLO: Objection. Vague  
8       and you can answer.

9           A        I think what that -- what she's  
10       trying to say there is that if something on  
11       the first page needs to be changed, then  
12       Mr. McCament would have to re-sign the first  
13       page because the existing page with his  
14       signature on it is a PDF and couldn't be  
15       changed so they would have to have him re-sign  
16       it all over again.

17           Q        Okay. Was it the first page or  
18       first part?

19                   MR. MARUTOLLO: Objection to the  
20       extent the document speaks for itself and,  
21       also, just reassert our argument that this is  
22       governmental deliberations, but you can answer

1 the question.

2 A As I understand what she's saying,  
3 she is suggesting that if the people on this  
4 email chain agree that something on the first  
5 page needs to be changed, then, yes, they --  
6 he would have to re-sign that first page to go  
7 along with the rest of the memo where apparent  
8 -- where it seems other changes may be  
9 contemplated, too.

10 Q Okay. Okay. So a couple questions.

11 First, what -- so the -- the changes that you  
12 had highlighted here were with respect to  
13 explanation of the country conditions in  
14 Sudan, correct?

15 MR. MARUTOLLO: Objection. Asked  
16 and answered, but you can answer again.

17 A The -- I wasn't -- what I was  
18 pointing out were things that I saw were  
19 inconsistencies within the report.

20 Q Okay. But the highlighted language,  
21 I guess, from your email goes to parts of the  
22 first part of the memo that discussed the

1 country conditions in Sudan.

2 MR. MARUTOLLO: Objection. Asked  
3 and answered. You can answer again.

4 A Correct.

5 Q And for those parts of the memo to  
6 be changed or parts to be excised from the  
7 memo, who in the process would have to sign  
8 off on that before the memo arrived on the  
9 Secretary's desk?

10 MR. MARUTOLLO: Objection. You can  
11 answer to the extent you know.

12 A As I understand the process, then,  
13 if there were to be any changes to this memo,  
14 which is a USCIS document, then the  
15 then-director would have had to have signed  
16 off on them.

17 Q Anyone else that would need to sign  
18 off?

19 MR. MARUTOLLO: Objection, again,  
20 just asserting that Mr. Cissna is not a  
21 30(b) (6) witness and this does not even  
22 pertain to the Haiti determination, but you

1 can answer the question to the extent you  
2 know.

3 A The only person who clears a  
4 document like this on behalf of the agency  
5 would be the director.

6 Q Okay. In terms of a process for  
7 making amendments like this, is there anyone  
8 else that would be apprised of an amendment  
9 like this at this late stage within USCIS?

10 MR. MARUTOLLO: Objection as being  
11 vague. Objection, asked and answered, but you  
12 can answer.

13 A I think as a general matter, any  
14 time a memo or document that's created by a  
15 component of DHS gets sent back with comments  
16 or suggested red lines from a DHS headquarters  
17 component, then the memo is typically just  
18 sent back to the original drafting office  
19 within the component to assess those concerns  
20 or red lines, and then adjudicate them; that  
21 is to say, decide whether they accept them or  
22 not. And if the originating office accepts

1       them, then they do so, and then refinalize the  
2       memo, send it back and eventually the process  
3       reaches a point where everyone agrees the memo  
4       is fine and then it can move on to the  
5       Secretary's desk.

6           Q        Okay. And here, who, again, was the  
7       originating office for this memo?

8                    MR. MARUTOLLO: Objection. You can  
9       answer, but we would object on the extent that  
10      it calls for internal government  
11      deliberations, but you can still answer.

12           A        Since I wasn't at USCIS at the time,  
13      I don't know. Assuming the process is the  
14      same as it is now, it would have been the  
15      Office of Policy and Strategy, which  
16      coordinated the memo, but I don't know for  
17      certain that they did in this case. I assume  
18      they did.

19           Q        So it appears that Ms. Petyo offers  
20      to handle the revisions and asks for, as you  
21      said, asks for the Word documents.

22                   So is that a typical part of this

1 practice where her office would take over the  
2 revision process at this stage as opposed to  
3 the originating office?

4 MR. MARUTOLLO: Objection, again.

5 The witness is not a 30(b) (6) witness and this  
6 does not relate to a decision in which he was  
7 the CIS director at the time or to Haiti, but  
8 given those objections you can still answer  
9 the question.

10 A As I've long understood the process,  
11 it's the originating components which is, I  
12 guess for a lack of a better term, the owner  
13 of the document, so it would be that  
14 originating component, which would make the  
15 edits and just send them back. So it is  
16 unclear to me what Ms. Petyo is referring to  
17 there.

18 Q Okay. So it would not be typical,  
19 at least in your experience, for her  
20 department to take over ownership of the  
21 document at this stage; is that correct?

22 MR. MARUTOLLO: Objection. I think

1 that mischaracterizes his testimony, but you  
2 can answer.

3 A In my experience, at least in the  
4 Office of Policy, what would happen frequently  
5 would be that the Office of Policy would have  
6 comments or concerns or even red line edits  
7 that we would propose to documents, not just  
8 ones like this, and those would be sent back  
9 and adjudicated by the originating component.

10 Q Okay. When you say adjudicated,  
11 could you explain a little bit more what you  
12 mean by that?

13 A When a -- when one component of the  
14 agency -- this is just in general government  
15 experience -- when one component has comments  
16 or suggested red lines on a document that is  
17 drafted by a different component, in the usual  
18 executive secretariate process, the document  
19 goes back to the originating office and the  
20 authors of the document -- the author or  
21 authors of the document look at all the  
22 suggested edits, red lines, comments, concerns

1 and respond to them. Sometimes the  
2 originating office will agree with the  
3 proposed red lines and sometimes they won't.  
4 That process of deciding how to react to  
5 different comments or red lines or comment  
6 bubbles is the process of adjudicating those  
7 suggested revisions. That's what I mean by  
8 adjudication.

9 Q Okay.

10 And with respect to a TPS decision  
11 memo like this, is it the director who would  
12 have the final say in adjudicating conflicting  
13 intra agency positions?

14 MR. MARUTOLLO: Objection, again to  
15 the extent it calls for internal government  
16 deliberations, but you can answer the  
17 question.

18 A As a general matter, it would be  
19 because the -- if the document comes back to,  
20 in this case, USCIS, and edits are -- proposed  
21 edits are responded to or adjudicated as I  
22 just described, it would almost certainly

1 require the front office to look at it again  
2 before it goes off the second time, or a third  
3 time, or however many times, and it may even  
4 require the memo to be re-signed, but either  
5 way, the -- at least the front office would  
6 surely look at it again if they did the first  
7 time.

8 Q Okay. Okay. Let's move on.

9 MS. WEBB: Exhibit 107.

10 (Exhibit 107 was marked for  
11 identification and attached to the deposition  
12 transcript.)

13 A Excuse me, may I grab my water? I  
14 forgot.

15 Q Sure.

16 A Okay.

17 (Document review.)

18 Okay. I have reviewed the document.

19 Q Okay.

20 Do you recognize the document?

21 A I do.

22 Q There's not too many more of these

1 but I'm going to ask you again, what is the  
2 document and where are we in the process that  
3 we've discussed today in terms of getting this  
4 decision memo to your desk for signing?

5 MR. MARUTOLLO: Objection. You can  
6 answer.

7 A Well, the document appears to be an  
8 unsigned draft of the decision memo that was  
9 being prepared, unsigned and undated draft  
10 revision of the draft that was being prepared  
11 for the Secretary in connection with the Haiti  
12 TPS designation situation.

13 Q Okay. Do you recall reviewing this  
14 draft specifically?

15 A I do not recall specifically this  
16 draft, so, no.

17 Q With respect to this decision memo  
18 on Haiti, do you recall looking at drafts  
19 prior to the version you signed?

20 MR. MARUTOLLO: Objection to the  
21 extent it calls for internal government  
22 deliberations, but you can answer.

1           A     I don't recall. If there were  
2     multiple drafts, there may have been, but I  
3     don't recall specifically whether in the case  
4     of Haiti there were multiple drafts.

5           Q     Okay. Who within USCIS would have  
6     ownership of the drafts as they're sort of  
7     being prepared before they come to you?

8                    MR. MARUTOLLO: Objection. It  
9     assumes facts not in evidence, but you can  
10    answer.

11          A     The Office of Policy and Strategy  
12    would be, as we discussed, the office that  
13    would be coordinating the drafting of these  
14    documents so that office would be the one that  
15    would, again, for lack of a better term, own  
16    the document.

17          Q     Okay.

18                    So the document references a country  
19    conditions memo.

20                    What other data sources would be  
21    used to prepare this document?

22                    MR. MARUTOLLO: Objection. You can

1 answer.

2 A I don't know enough to say, based on  
3 my understanding of what OP&S, Office of  
4 Policy and Strategy, does.

5 Q Would anyone outside of USCIS have  
6 seen, maybe not this draft, but would have  
7 seen the drafts of the memo before they came  
8 to you?

9 MR. MARUTOLLO: Objection, again, to  
10 the extent it calls for internal government  
11 deliberations, also to the extent it calls for  
12 speculation, but you can answer to the extent  
13 you know.

14 A I don't know if anybody outside of  
15 CIS saw this or any of the other drafts for  
16 the Haiti TPS decision memos.

17 Q Would any other agencies or parts of  
18 DHS, do they regularly provide input into this  
19 type of memo before you sign it?

20 MR. MARUTOLLO: Objection. Again,  
21 the witness is not a 30(b) (6) witness here.  
22 He's testifying as a fact witness. Also

1 object on the grounds that it calls for  
2 internal government deliberations and calls  
3 for speculation, but you can answer.

4 A I don't know if that happens. What  
5 I do know is that once the memo is signed,  
6 then other DHS offices and component agencies,  
7 as it is circulated before it goes to the  
8 Secretary, can chime in and make comments or  
9 suggestions.

10 Q Okay.

11 A I would amend -- add that, as the  
12 memo states, the Department of State also is a  
13 part of this process. As the memo states --  
14 as this draft memo states, "As part of the  
15 review process, USCIS has consulted with the  
16 Department of State, DOS, and as of the date  
17 of this memorandum, DOS has not provided a  
18 formal recommendation."

19 Q All right. Thank you.

20 Okay. So turning to page 3, which  
21 contains the current country conditions  
22 analysis, I just want to point your attention

1 to a couple of statements in the statements  
2 here.

3 So, in the first full paragraph  
4 under "Current country conditions," the memo  
5 states, "Already strained government resources  
6 have been further tested by large numbers of  
7 returns of Haitians from the Dominican  
8 Republic increasing in pace in recent months."

9 So, in your view, is -- would that  
10 type of information bear on the decision to  
11 recommend extension or termination of TPS?

12 MR. MARUTOLLO: Objection, to the  
13 extent it calls for internal government  
14 deliberations and also to the extent it  
15 assumes facts not in evidence, but you can  
16 answer.

17 A Well, the Haiti TPS decision and the  
18 potential extension were being considered  
19 under the extraordinary -- according to this  
20 memo, the extraordinary and temporary  
21 conditions prong in Section 244(b)(1)(C), and  
22 under that prong the statute provides that

1        "The Secretary must find that there exists  
2        extraordinary and temporary conditions in the  
3        foreign state that prevent aliens who are  
4        nationals of the state from returning to the  
5        state in safety." So, based on that, any  
6        conditions in the country that could be  
7        considered to prevent people from returning in  
8        safety are perfectly valid things to consider.

9            Q        To consider for the extension and  
10        termination decision as opposed to just the  
11        original designation, correct?

12            MR. MARUTOLLO: Objection. Vague.  
13        You can answer.

14            A        Well, there is -- I mean, as the  
15        memo states, there are a number of different  
16        potential decision points. One is to extend  
17        the original existing TPS designation.

18        Alternately, to terminate or to redesignate  
19        or, I suppose, newly designate, put in  
20        different words, based on some other grounds,  
21        or make no decision at all, which is actually  
22        something provided in the statute too. So

1       whatever the conditions are, they would inform  
2       one of those -- one of those selections.

3           Q        Okay. So, the statement further  
4       down the page in the second long paragraph  
5       that Haiti also -- it's at the very end of the  
6       paragraph, "Haiti also still faces a  
7       considerable housing shortage exacerbated by  
8       the destruction caused by Hurricane Matthew,  
9       which impacted over 236,000 homes and  
10      displaced 175,000 persons."

11               Same -- is that also true for that  
12       statement, that it's fair -- perfectly  
13       acceptable for the department to consider that  
14       type of condition in making its determination?

15               MR. MARUTOLLO: Objection. Vague.  
16       It also calls for a legal conclusion in what  
17       the Department of Homeland Security would do,  
18       but you can answer.

19           Q        In your view.

20           A        That is -- assuming that is correct,  
21       that is a fact on the ground. It is a country  
22       condition. Whether the Secretary determines

1       that that specific country condition is  
2       something that makes it not -- makes it  
3       impossible for people to return to the state  
4       in safety is for her to decide.

5           Q        Okay. Then, finally on the next  
6       page, page 4 at the top, it says, "Haiti  
7       successfully completed its presidential  
8       election in February 2017. However, Haiti's  
9       government institutions continue to lack  
10       sufficient resources to provide services to  
11       more than a limited portion of the  
12       population."

13               The same question, is that also a  
14       fact on the ground for the Secretary to  
15       consider under the statute --

16               MR. MARUTOLLO: Objection.

17           Q        -- in your view?

18               MR. MARUTOLLO: Objection, vague, to  
19       the extent it calls for internal government  
20       deliberations and also to the extent it calls  
21       for a legal conclusion, but you can answer.

22           A        Assuming that's correct, that's a

1 fact on the ground. It is -- it is a country  
2 condition and, as I said before, whether that  
3 specific country condition is something that,  
4 in fact, causes it -- makes it that it's not  
5 safe for people to return, up to the Secretary  
6 to decide whether she thinks that that -- that  
7 meets that requirement -- meets that  
8 criterion.

9 Q Okay, thank you.

10 Okay, let me give you the final  
11 version here.

12 (Exhibit 108 was marked for  
13 identification and attached to the deposition  
14 transcript.)

15 A (Document review.)

16 I reviewed the document. At this  
17 point, though, may I take a break?

18 Q Yes, absolutely.

19 A Very quickly.

20 THE VIDEOGRAPHER: Going off the  
21 record at 1:43.

22 (A brief recess was taken.)

1 THE VIDEOGRAPHER: We're back on the  
2 record at 1:47.

3 BY MS. WEBB:

4 Q Okay. So I think you had just  
5 familiarized yourself with Exhibit 108, and do  
6 you recognize this document?

7 A Yes.

8 Q Okay. And do you recall the role  
9 you played in this particular version -- let  
10 me -- let me clarify that.

11 Do you recall making edits to this  
12 version before you signed it?

13 A I don't.

14 MR. MARUTOLLO: Objection. You can  
15 answer.

16 A I don't recall that, no.

17 Q Okay. Do you recall reviewing the  
18 document before signing it?

19 A T --

20 Q Or just vaguely recall signing it?  
21 I guess I'm just trying to gauge how well --  
22 how well you remember sort of reviewing this

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1 when it came to you.

2 MR. MARUTOLLO: Objection. Compound  
3 and vague, but you can answer to the extent  
4 you remember if you -- if you reviewed the  
5 document.

6 A I do remember reviewing this  
7 document, yes.

8 Q Do you remember when you reviewed  
9 it, whether you -- strike that.

10 Let's -- so, I want to ask you just  
11 a few questions about differences between this  
12 document and the one that we just looked at  
13 and discussed, and it's not -- it's not a  
14 quiz, and you can take as much time as you  
15 would like to look at the relevant portions,  
16 but what I wanted to ask you is, so, in the  
17 prior -- in the undated draft, we had -- we  
18 had gone over some language in certain parts  
19 of the draft that -- so the one -- the first  
20 statement that we reviewed was that "Already  
21 strained government resources have been  
22 further tested by large numbers of returns of

1      Haitians from the Dominican Republic  
2      increasing in pace in recent months."

3                    And you acknowledge that that was  
4      acceptable consideration for the Secretary.  
5      And what I would like to ask you is whether  
6      you see that language in this final draft that  
7      you signed?

8                    MR. MARUTOLLO: First, just an  
9      objection. Mischaracterizes the prior  
10     testimony and, second, to the extent counsel  
11     knows that the language is or is not in here  
12     as a matter of saving time it might be --

13                    MS. WEBB: Absolutely. Absolutely.

14     BY MS. WEBB:

15                    Q       It's not a quiz. It's just to  
16     highlight the missing language.

17                    Are you aware that that language  
18     about strain on government resources by large  
19     numbers of returns of Haitians was removed  
20     from this final draft that you signed?

21                    MR. MARUTOLLO: Objection, again, to  
22     the extent it calls for internal government

1 deliberations, you can answer to the extent  
2 you know.

3 A I'm not aware of that, no.

4 Q Will you accept my representation  
5 that it was --

6 A Yes.

7 Q Feel free to look at it.

8 A Yes, I will accept your  
9 representation that it was taken out.

10 Q Okay. And I take it you did not  
11 request to have the language removed yourself,  
12 that you recall?

13 MR. MARUTOLLO: Objection. You can  
14 answer.

15 A I don't recall that, no.

16 Q Do you know why the language would  
17 have been removed?

18 MR. MARUTOLLO: Objection. You can  
19 answer.

20 A No.

21 Q Okay. What about the language we  
22 reviewed that "Haiti also still faces a

1 considerable housing shortage exacerbated by  
2 the destruction caused by Hurricane Matthew  
3 which impacted over 236,000 and displaced over  
4 175,000 persons," were you aware that that  
5 language was removed from this final draft  
6 that you signed?

7 MR. MARUTOLLO: I'm going to object  
8 to the extent that it calls for internal  
9 government deliberations and also calls for  
10 speculation, but you can answer.

11 A I was not aware of that removal, but  
12 I accept your representation that it was.

13 Q And any reason you can think of why  
14 that language would have been removed from the  
15 final draft?

16 MR. MARUTOLLO: Objection. Again,  
17 that goes to internal government deliberations  
18 and assumes facts not in evidence. I think,  
19 also, really calls for a legal conclusion as  
20 well, but you can answer -- answer to the  
21 extent you have any idea.

22 A I don't know why, but it is worth

1 noting that whenever a document is in draft  
2 form or under review, it often goes --  
3 undergoes substantial changes. So it is not  
4 surprising that the final version, which I  
5 signed, is different from some earlier  
6 version.

7 Q Sure.

8 Just one more statement on the  
9 record. So we discussed how the earlier  
10 drafts said that the "Haiti government  
11 institutions continue to lack sufficient  
12 resources to provide services to more than a  
13 limited portion of the population," were you  
14 aware that that language was removed from the  
15 final?

16 A No.

17 MR. MARUTOLLO: Objection, again, to  
18 the extent it calls for internal government  
19 deliberations, but you can answer.

20 A No.

21 Q I'll highlight another sentence from  
22 the original -- excuse me, from the earlier

1 draft, which says, "Levels of crime and  
2 violence, including gender-based violence,  
3 remain high as does the potential for civil  
4 unrest."

5 A What page is that on?

6 Q Sorry, it's on page 3.

7 It's in the middle of the very last  
8 paragraph.

9 MR. MARUTOLLO: I'm sorry, what page  
10 did you say?

11 MS. WEBB: Page 3 of the earlier  
12 draft.

13 MR. MARUTOLLO: I'll object to the  
14 extent it calls for internal government  
15 deliberations and calls for speculation. You  
16 can answer.

17 A I was not aware that that was  
18 removed either.

19 Q So, duly noting that, obviously, the  
20 revision process for a draft -- in the  
21 revision process for a draft changes are made,  
22 can you think of any reason why these types of

1 statements which go to negative country  
2 conditions would all have been removed from  
3 the final version that you signed?

4 MR. MARUTOLLO: Objection. Again,  
5 it calls for internal government  
6 deliberations. It also calls for speculation,  
7 calls for a legal conclusion, and assumes  
8 facts not in evidence. But you can answer.

9 A I don't know why. To make a more  
10 informed -- give you a more informed response,  
11 I would really have to, you know, understand  
12 the totality of things that were taken out or  
13 put in, and I would also note that the memo in  
14 question is a cover memo to a package, and the  
15 package includes, at least looking at the  
16 final version, Exhibit 108, an attachment that  
17 describes -- attachment A is a legal authority  
18 description, attachment B, according to this,  
19 is the entirety of the USCIS RAIO unit report,  
20 and then attachment C is the Department of  
21 State recommendation. So those other  
22 documents, in particular, the latter two, may

1 very well have information that is not  
2 reflected in this cover memo, so just because  
3 something was taken out of the cover memo from  
4 a previous draft does not necessarily mean  
5 that it wasn't a fact that was presented to  
6 the Secretary in some other manner.

7 Q Okay. But this, what you're calling  
8 the cover memo, is the decision memo with the  
9 area for signing for the Secretary, correct?

10 A That's right.

11 Q And it encapsulates your specific  
12 recommendation and what you have chosen to  
13 highlight to the Secretary, correct?

14 MR. MARUTOLLO: Objection. You can  
15 answer.

16 A That's right.

17 Q Once you signed this, do you recall  
18 any additional revisions -- not revisions --  
19 but any additional discussions that you had  
20 with others in the agency about your -- your  
21 decision memo?

22 MR. MARUTOLLO: Objection to the

1 extent it calls for internal government  
2 deliberations and also to the extent it's  
3 vague, but you can answer.

4 A I don't recall specific meetings,  
5 but it is my general recollection that there  
6 were -- this is dated November 3rd, that there  
7 were meetings after this, but I do not recall  
8 with specificity when they were or who was at  
9 them.

10 Q Okay. I have a document that I'll  
11 show you that may refresh your recollection.

12 (Exhibit 109 was marked for  
13 identification and attached to the deposition  
14 transcript.)

15 BY MS. WEBB:

16 Q This is, I will represent to you,  
17 the government's objections and responses to  
18 interrogatories in another case entirely, so  
19 there's no need to review the whole thing  
20 unless you would like to. What I would like  
21 to point you to is just the last few pages  
22 beginning on page 15, which is an attachment

1 A, and it's a list of meetings. So if you  
2 wouldn't -- if you wouldn't mind taking a look  
3 at this and see if it helps refresh your  
4 memory about specific meetings that you were  
5 at.

6 A Okay.

7 (Document review.)

8 MR. MARUTOLLO: Also, this was  
9 marked as Exhibit 109?

10 MS. WEBB: Yes, yes. This is 109.

11 MR. MARUTOLLO: I direct the witness  
12 to look at interrogatory number 2 first. The  
13 attachment seems to be in response to  
14 interrogatory number 2.

15 MS. WEBB: Yes.

16 MR. MARUTOLLO: Interrogatory number  
17 2 is on page 8.

18 A (Document review.)

19 Okay, I reviewed the attachment.

20 Q Okay. So I want to ask you  
21 specifically whether the meetings listed on  
22 page 17, control after November 3rd, 2017, if

1 any of those refresh your memory as to  
2 meetings you had or discussed -- that  
3 discussed the Haiti TPS decision.

4 MR. MARUTOLLO: Objection. Vague.

5 Again, to the extent it goes beyond this case,  
6 you know, I would object, but you can answer  
7 to the extent it refreshes any memory that you  
8 have.

9 A Well, like I said, I did recall,  
10 apparently correctly, that there were meetings  
11 after this memo dated November 3rd was sent on  
12 TPS. I do remember the November 15th meeting  
13 -- no, the November 13th meeting with the  
14 foreign minister of Haiti.

15 Q Okay.

16 A I remember that one. And -- so that  
17 one I do remember clearly.

18 Q Okay. And what about the one before  
19 that, the same day?

20 A That one truly I -- I have zero  
21 recollection of what -- what was discussed at  
22 that, but the one with the foreign minister,

1 that one I do remember very well because it  
2 was notable, the foreign minister himself  
3 came.

4 Q Yes. What do you remember about  
5 that meeting?

6 MR. MARUTOLLO: Objection.

7 Generally to the extent it calls for internal  
8 government deliberations in terms of anything  
9 that was not shared with the foreign minister,  
10 you know, I would object, but otherwise you  
11 can answer the question.

12 A The meeting was between Acting  
13 Secretary Duke and a number of other DHS  
14 officials and the foreign minister and his  
15 interage. The meeting was held in Washington,  
16 D.C. at the Ronald Reagan Building. The  
17 foreign minister basically expressed his  
18 desire that the Secretary would extend TPS,  
19 and just he and his staff made that desire  
20 very clear, and Acting Secretary Duke replied  
21 that she would take everything they had told  
22 her into consideration, and that was basically

1 what the meeting -- how the meeting went.

2 Q What role did you play in the  
3 meeting, if you remember?

4 A Well, I was there in my capacity as  
5 the director of USCIS, and the -- I didn't do  
6 much talking. There were -- as I recall,  
7 there were a few technical questions,  
8 operational questions that the Acting  
9 Secretary pitched to me regarding if there  
10 were to be a termination, if she made the  
11 termination, how would it be implemented, what  
12 would be the -- I think there were questions  
13 relating to extending employment  
14 authorization, things like that. That's what  
15 I recall from the meeting.

16 Q So at that time the Secretary had  
17 not made her decision yet.

18 MR. MARUTOLLO: Objection. Calls  
19 for speculation. I mean, you can answer to  
20 the extent you know.

21 Q Let me rephrase because I don't mean  
22 in her own head.

1                   To your knowledge, at that time her  
2 decision had not been issued yet. She was  
3 still in the process of reviewing the  
4 materials; is that correct?

5                   MR. MARUTOLLO: Objection. You can  
6 answer.

7                   A        Yes, as I recall, this meeting  
8 happened during the time when she was still  
9 reviewing all of the materials and considering  
10 the issue.

11                  Q        And did that meeting have any affect  
12 on your view that you had -- well, did the  
13 meeting affect your view of the decision that  
14 you had come to in this decision memo?

15                  MR. MARUTOLLO: Objection. Vague  
16 and calls for a legal conclusion, but you can  
17 answer. Assumes facts not in evidence, but  
18 you can answer.

19                  A        No, it did not change my sense of  
20 the correct recommendation to the Secretary.

21                  It was informative, but it didn't  
22 change as I saw it the -- it didn't change

1 what I thought was the correct recommendation.

2 Q And why is that?

3 MR. MARUTOLLO: Objection to the  
4 extent it calls for internal government  
5 deliberations, but you can answer.

6 A Because I didn't hear anything at  
7 the meeting that added new information that  
8 would have changed my opinion on the ability  
9 or nonability of Haitian nationals to return  
10 to Haiti in safety were TPS to be terminated  
11 for them.

12 Q So any other -- other than these  
13 two, any other meetings you can remember after  
14 you signed this decision memo that related to  
15 the Haiti -- that related to this decision  
16 memo?

17 MR. MARUTOLLO: Objection. You can  
18 answer.

19 A No, not that relate to the Haiti  
20 memo, no.

21 Q Okay. What about to Haiti TPS  
22 generally?

1 MR. MARUTOLLO: Objection. You can  
2 answer.

3                   A        No, I don't remember any specific  
4 meetings on Haiti TPS generally. I just have  
5 no recollection of any additional meetings.

6 There may have been, but I just don't  
7 remember. I do remember that one with the  
8 foreign minister, but I don't remember  
9 anything else, really.

10 Q Okay. By chance do you remember any  
11 phone calls related to your decision memo  
12 outside of USCIS with other government  
13 officials or agencies?

14 MR. MARUTOLLO: Again, I would  
15 object to the extent it calls for internal  
16 government deliberations, but you can answer  
17 given the court's order.

18 A No, I truly don't remember any  
19 specific phone calls on Haiti either.

20 Q Okay. So prior to signing this  
21 memo, I think we talked a little bit about  
22 what you recall in terms of the revision

1 process for the memo.

6 MR. MARUTOLLO: Objection to the  
7 extent it calls for internal governmental  
8 deliberations, but you can answer to the  
9 extent -- to the extent you remember.

10 A I can't say I recall with  
11 specificity that I had conversations prior to  
12 signing that, but such conversations could  
13 very well have happened. I just don't  
14 remember.

15 Q I guess let me make it a little  
16 broader then.

17 Do you remember prior to signing the  
18 decision memo here having conversations  
19 outside of USCIS about TPS generally as  
20 opposed to just Haiti specifically?

21 MR. MARUTOLLO: Again, I would  
22 object to the extent it calls for internal

1 governmental deliberations. Also, the  
2 question has been asked and answered so I  
3 would -- he can answer again, but ...

4 A Just so I'm clear, you're asking if  
5 there were conversations outside -- with  
6 people outside of DHS or outside of CIS?

7 Q We'll start with outside of DHS.

8 Any meetings or conversations with people  
9 outside of DHS about TPS generally while you  
10 were in your role as director?

11 MR. MARUTOLLO: Objection to the  
12 extent it calls for internal governmental  
13 deliberations. Also, just on vagueness  
14 grounds, but you can answer to the extent you  
15 recall conversations about TPS.

16 A I do recall -- I do recall, and I'm  
17 looking at other meetings here in this  
18 attachment that happened that don't relate to  
19 Haiti but did relate to TPS, for example, the  
20 meeting with the minister of foreign affairs  
21 of El Salvador. I remember that meeting. He  
22 certainly -- or she, I don't recall, it was an

1       outside DHS person, but I don't specifically  
2       recall any conversations with people outside  
3       of DHS about TPS.

4                   Generally, again, such conversations  
5       could have happened, but I just have no  
6       specific recollection of talking about TPS  
7       with people outside of DHS except for those  
8       meetings where we had foreign ministers or  
9       people like that, or there were also -- there  
10      was a group of nuns that came in to talk about  
11      Central American TPS. We talked to them. But  
12      I -- aside from those interactions, I don't  
13      recall talking to anybody outside of DHS about  
14      TPS.

15           Q        What about with anyone at the White  
16       House?

17           MR. MARUTOLLO: We would object to  
18       the extent it calls for internal government  
19       deliberations. Also, to the extent it  
20       potentially calls for presidential  
21       communications privilege and is covered in our  
22       brief that's currently pending in the District

1 Court on White House related discovery. You  
2 can answer to the extent whether you had any  
3 communications with the White House, but  
4 that's at least right now as far as we would  
5 permit you to answer.

6 A I don't recall any conversations  
7 with the White House about TPS during this  
8 time.

9 Q The same question, the Department of  
10 State?

11 MR. MARUTOLLO: We would object  
12 again on the grounds for internal government  
13 deliberations, but you can answer that  
14 question.

15 A I don't recall any specific  
16 conversations that I had with the Department  
17 of State. I am aware that my staff was  
18 certainly in communication with the Department  
19 of State constantly because they're -- they  
20 had an important role in the development of  
21 USCIS's recommendation, but I don't recall  
22 myself calling anybody over at the Department

1 of State about it. I just don't remember if I  
2 did that.

3 Q What about with other branches  
4 within DHS, do you recall having any meetings  
5 or conversations about Haiti TPS?

6 MR. MARUTOLLO: Objection. Vague.  
7 But you can answer.

8 Q Prior, prior to.

9 A Prior. I -- I don't recall specific  
10 conversations, but -- I mean, even during the  
11 time that I was -- before I was confirmed for  
12 my job when I was working at DHS headquarters,  
13 just in my normal job, you know, I -- I was  
14 generally aware of, you know, ICE staff, you  
15 know, points that ICE staff would make about  
16 TPS or CBP, just kind of in general. But I  
17 don't recall any specific actually substantive  
18 conversations I had with anybody from other  
19 DHS components on this.

20 Q You mentioned points ICE would make  
21 about TPS generally. What do you recall those  
22 being, just generally?

1 MR. MARUTOLLO: Again, object to the  
2 extent it calls for internal government  
3 deliberations, but you can answer the question  
4 based on the court's order.

5           A       Just as a general matter, ICE has an  
6           interest in the extension or nonextension of  
7           TPS because if TPS is terminated, then those  
8           people after the wind-down period is  
9           completed, if they haven't left and if they  
10          have no other -- no other underlying status,  
11          then they could potentially become removable  
12          illegal aliens, in which case ICE would need  
13          to deal with that. So as a general matter,  
14          they have an interest in that decision and --  
15          that's about the extent of it.

16 Q When you made your decision to  
17 recommend termination of Haiti TPS, at the  
18 time, did you -- were you aware of any other  
19 agencies' views on whether TPS should be  
20 terminated?

21 MR. MARUTOLLO: Objection. I would  
22 say that question goes beyond what the court

1 allowed in terms of permitting questions on  
2 deliberative process materials, so I would  
3 direct this witness not to answer to the  
4 extent they're about other opinions or views  
5 of other agencies that are clearly  
6 deliberative in nature. So as the question is  
7 phrased, I would direct the witness not to  
8 answer.

9 MS. WEBB: I guess I just want to  
10 explore a little bit of what factors he had to  
11 consider when he reviewed and signed the  
12 decision memo.

13 MR. MARUTOLLO: I think that's a  
14 fair question. I mean, I think we would still  
15 object, but he can answer the question what  
16 factors. But to the extent the question is  
17 what other agencies or other entities within  
18 U.S. -- within DHS had particular views or  
19 opinions prior to any decision being made, I  
20 think that's inherently a deliberative  
21 communication and we would -- and I don't  
22 think that's covered by yesterday's order of

1 the court, so I would direct the witness not  
2 to answer that question. But I would allow  
3 the witness to answer the question of what  
4 factors, you know, did he consider in reaching  
5 his determination.

6 A The factors that I considered in  
7 deciding whether to sign this or not were  
8 really what's in the -- what was in the  
9 packet, what was in the packet that was  
10 presented to me.

11 So the overlaying memo and then the  
12 other attachments that came with it, including  
13 the Secretary of State's recommendation, which  
14 as I recall was at least a several-page  
15 document, and then the RAIO research report,  
16 the memo -- the attachment describing the  
17 legal basis -- the legal authority. So all of  
18 that was what I looked at.

19 The -- as I recall, I think at the  
20 time that this memo was being sent to me,  
21 there may have been an in-person meeting at  
22 the agency with the Office of Policy and

1       Strategy, the lawyers to explain this and what  
2       was in the packet. I don't recall  
3       specifically what was discussed. Beyond that,  
4       to be sure, I was aware that other parts of  
5       DHS had their own opinions, but I left it to  
6       them to make their opinions known to the  
7       Secretary in whatever manner they did that.  
8       Truly I just relied on what was presented to  
9       me in this packet.

10           MS. WEBB: It makes sense to take a  
11       quick break and then we may only have one more  
12       session before we're done.

13           MR. MARUTOLLO: Sure.

14           THE VIDEOGRAPHER: We're going off  
15       the record at 2:22.

16                            (A brief recess was taken.)

17           THE VIDEOGRAPHER: We're back on the  
18       record at 2:29.

19       BY MS. WEBB:

20           Q       As part of your decision to  
21       recommend termination of Haiti TPS, did you  
22       make the determination that it was safe for

1       Haiti TPS beneficiaries to return to Haiti?

2                    MR. MARUTOLLO: Objection. You can  
3       answer.

4                    A       The -- the recommendation I made was  
5       that the Secretary terminate the designation,  
6       and I based that on my assessment based on the  
7       information in the memo presented to me that,  
8       in fact, there were not extraordinary and  
9       temporary conditions in Haiti that prevented  
10      Haitian nationals from returning to the state  
11      in safety.

12                  Q       Okay. In making that determination,  
13      did you examine some of the factors that we  
14      discussed about the large numbers of Haitians  
15      returning from the Dominican Republic and the  
16      housing shortages and the weekend -- excuse me  
17      -- the levels of crimes and violence and  
18      resources at the government, did you examine  
19      those factors in coming to your decision?

20                  MR. MARUTOLLO: Objection. Again,  
21      to the extent it calls for internal government  
22      deliberations, and also to the extent it

1 assumes facts not in evidence, but you can  
2 answer the question.

3 A My recommendation was based, as I  
4 said before, on everything that was presented  
5 to me in the packet, and that included  
6 everything in this cover memo and everything  
7 in the State Department's recommendation,  
8 which I don't have before me but which I  
9 recall had additional discussion in it, and  
10 then the RAIO research document as well.

11 I don't recall if the points you  
12 just talked about were included in any of  
13 those other documents, but whatever was in all  
14 of those documents was what I looked at and  
15 what I based my decision on, even if it wasn't  
16 specifically mentioned in that cover memo.

17 The -- I would note that in the  
18 cover memo -- well, I'll leave it at that.

19 Q So in the determination that it was  
20 safe for Haiti TPS beneficiaries to return,  
21 did that include all nearly 60,000  
22 beneficiaries to return once the designation

1 is terminated?

2 MR. MARUTOLLO: Objection to the  
3 extent it calls for speculation, and vague,  
4 but you can answer.

5 A Well, return, yes, it would cover  
6 all of the people who had TPS status who would  
7 then no longer have that status after -- if  
8 TPS were terminated but who had no other  
9 status.

10 It could be that -- it could be that  
11 many people with TPS, not just Haitians, but  
12 any TPS class of people, there could be many  
13 recipients of TPS who have some other  
14 underlying status that even if TPS were  
15 removed, they could still remain somehow.

16 Many TPS recipients often, if  
17 they're here long enough, they'll marry a U.S.  
18 citizen. Maybe they have an asylum claim.  
19 Maybe they have, you know -- there's a wide  
20 variety of ways in which people can stay. So  
21 the -- it wouldn't necessarily be all 40,000  
22 or 60,000 or whatever it was of TPS

1 beneficiaries would have to go back.

15 So these were all factors that we  
16 pointed to in the memo regarding the safety  
17 point.

18 Q Sure. So I think you're referring  
19 to paragraph -- the last full paragraph on  
20 page 3 of the signed memo where it does say  
21 that "In 2011, ICE resumed removal of Haitians  
22 on a limited basis, specifically those who had

1 final orders of removal and had been convicted  
2 of a serious crime." And then, "On September  
3 22nd, 2016" ... "DHS would resume removals of  
4 Haitian nationals in accordance with ICE's  
5 existing enforcement priorities."

6 So then at the end of paragraph it  
7 does say, "In total, ICE has removed over  
8 1,100 Haitians from fiscal years 2014 to 2016"  
9 and lists, I guess, "382 in 2014 and 433 in  
10 2015, and 310 in 2016."

11 Is that what you're referring to?

12 A Yes, that's what I'm referring to.

13 Q Would you agree that level of influx  
14 of people into Haiti -- that number of people  
15 removed from 2014 to 2016 was relatively  
16 small, a few hundred a year?

17 MR. MARUTOLLO: Objection. Vague.

18 Calls for a legal conclusion, but you can  
19 answer.

20 A Compared to the population of Haiti,  
21 which I believe is somewhere around 10 million  
22 people, it is a small number, yes.

1                   Q     If -- when TPS is ended, it would be  
2     potentially many, many more people returning  
3     at the same time, correct, than those few  
4     hundred a year?

5                   MR. MARUTOLLO: Objection. Calls  
6     for speculation. It assumes facts not in  
7     evidence and also assumes a legal conclusion  
8     as to when removal proceedings would be  
9     completed, but you can answer.

10                  A     Not necessarily because -- this is a  
11     misunderstanding amongst many people when  
12     talking about TPS policy, and that is that  
13     even if TPS is removed from a population, it  
14     doesn't mean that the very next day all 40,000  
15     or 60,000 or 250,000 will leave.

16                  They may choose not to leave. They  
17     may choose to remain unlawfully, in which case  
18     some will certainly leave on their own. But I  
19     would imagine that a number of people will  
20     choose not to leave lawfully. In that case,  
21     if they were a removal priority, then ICE  
22     would apprehend them and put them through

1 removal proceedings, assuming they didn't have  
2 a final order of removal already, and then  
3 remove them. But even in that circumstance,  
4 ICE can only remove populations to the country  
5 of origin at the rate and pace and frequency  
6 which the receiving country allows.

7 So the receiving country needs to  
8 give ICE travel documents for the people with  
9 final orders, and no country I know of would  
10 be giving tens of thousands of travel  
11 documents instantaneously to ICE. It would  
12 necessarily be a protracted process.

13 So the ability of a country to  
14 receive even relatively a large population of  
15 TPS recipients is -- assuming they were  
16 removed, would really be within their power to  
17 control because they would be the ones issuing  
18 the travel documents to ICE.

19 Q Okay. And was your determination  
20 that the TPS beneficiaries could return to  
21 Haiti in safety conditioned by your view that  
22 it would be more of a trickle than sort of a

1 flood?

2 MR. MARUTOLLO: Objection. Vague.

3 But you can answer.

4           A     Not particularly. The -- well, it  
5     was a consideration. It is a factor. It's --  
6     the ability of the country to receive the  
7     population could potentially, perhaps, be a  
8     factor to consider in whether those people are  
9     returned in safety.

20 So, yes, it was a factor, but the  
21 many other things that were discussed in this  
22 cover memo and in the underlying documents,

1 the State Department memo and the RAIO memo,  
2 including the discussion of the impact of the  
3 hurricanes in the preceding year or two.

4 So, again, to emphasize, we weren't  
5 just looking at things from a long time ago.

6 It was -- we were looking at more recent  
7 impacts on Haiti, including Hurricane Matthew.  
8 I believe Hurricane Irma was the other  
9 hurricane we looked at.

10 We concluded at CIS that, yes, those  
11 hurricanes had an impact. Their impact did  
12 not rise to the level of preventing people  
13 returning in safety. We presented that to the  
14 Secretary in the memo.

15 Q Okay. So in paragraph 2 of page 1,  
16 I guess it is, of the decision memo, it does  
17 say, "In summary, USCIS assesses that Haiti  
18 has made significant progress in recovering  
19 from the 2010 earthquake and no longer  
20 continues to experience the extraordinary and  
21 temporary conditions that formed the basis of  
22 Haiti's designation and redesignation of TPS."

1                   So just so I understand, so your  
2                   testimony is that you considered all of the  
3                   current conditions of the country or beyond  
4                   just those from the originating event to make  
5                   your decision to recommend termination of TPS?

6                   MR. MARUTOLLO: Objection. Again,  
7                   to the extent you're referring to the document  
8                   itself, the document speaks for itself, the  
9                   decision. I believe it's also been asked and  
10                  answered, but you can answer.

11                  A        That is correct.

12                  Q        And are you aware of whether the  
13                  Secretary of Homeland Security took a  
14                  different view of what the statute requires in  
15                  that respect?

16                  MR. MARUTOLLO: Objection. Calls  
17                  for speculation and, again, to the extent it's  
18                  a deliberative governmental communication that  
19                  he may be aware of, but given that objection,  
20                  you can answer the question to the extent you  
21                  know.

22                  A        I'm not aware of what her view was

1 on what the statute provides or doesn't  
2 provide.

3 May I add one point on the earlier  
4 question or what you just asked, actually. It  
5 is true that that first page does say, "In  
6 summary, USCIS assesses," et cetera, et  
7 cetera, and then accordingly, USCIS  
8 "recommends that you terminate Haiti's TPS  
9 designation." That is true. We did recommend  
10 that the designation based on the earthquake  
11 from 2010 be terminated.

12 Later on in the memo on page 5, this  
13 would be the paragraph numbered 3, redesignate  
14 Haiti for TPS. We say, "In addition to making  
15 a decision to terminate or extend Haiti's TPS  
16 designation, you could also reconsider  
17 redesignating the country for TPS." In other  
18 words, establishing a TPS designation based on  
19 something else. And we say, yes, there was  
20 this hurricane in October 2016, which seems to  
21 be the most impactful thing that has happened  
22 to the country that could potentially be the

1 basis of a TPS designation, but, we, USCIS,  
2 don't think that that rises to the level that  
3 is required for designation.

4 So, though, yes, we recommended that  
5 she terminate the designation based on the  
6 earthquake, we did assess whether there was  
7 potentially some other basis to designate and  
8 we decided that -- to not recommend that. But  
9 ultimately the decision was hers. But we did  
10 present that possibility as something she  
11 could consider.

12 Q Okay. Thank you.

13 I just have one more question on  
14 this subject before we move on.

15 When you were making your decision  
16 to recommend termination, did you -- do you  
17 recall it being in the packet that you  
18 reviewed the data that we discussed earlier in  
19 the deposition about the statistics related to  
20 crime and welfare of the Haitian TPS  
21 beneficiary population?

22 MR. MARUTOLLO: Objection.

1 Mischaracterizes prior testimony and assumes  
2 facts not in evidence, and also was asked and  
3 answered, but you can answer the question.

4 A I don't recall that specifically,  
5 whether any of that was in any part of the  
6 packet, no.

7 Q Do you recall considering that data  
8 when you made your decision?

9 MR. MARUTOLLO: Objection. Vague  
10 and also, again, asked and answered, but you  
11 can answer.

12 A No, I don't recall that, no.

13 Q Okay.

14 MS. WEBB: I'll mark this as Exhibit  
15 110.

16 (Exhibit 110 was marked for  
17 identification and attached to the deposition  
18 transcript.)

19 A (Document review.)

20 All right. I have reviewed the --

21 Q All right. Do you recall this email  
22 chain?

1 A I didn't until I just read it.

2 Q I know we've been over some of these  
3 people before, but I think it was earlier in  
4 the year so I just want to go over really  
5 quickly who was in what position. So, at that  
6 time you had been confirmed by Congress,  
7 correct?

8 A Uh-hmm.

9 Q What position was Ms. Nuebel Kovarik  
10 in?

11 A So at this time in November of 2017,  
12 Kathy Nuebel Kovarik was the chief of the  
13 Office of Policy and Strategy.

14 Q What about Craig Symons or Symons?

15 A Craig Symons was the chief counsel  
16 of USCIS.

17 Q Dimple Shah?

18 A Dimple Shah was, I believe at that  
19 time, the deputy -- one of the deputy general  
20 counsels in the DHS Office of the General  
21 Counsel.

22 Q Finally, what about Ms. Short?

1 A Mr. Short.

2 Q Sorry.

3 A Tracy Short was a counselor -- he  
4 was detailed from ICE to be a counselor to the  
5 Secretary.

6 Q Okay. If we go back to our list of  
7 meetings, so just to check, do you recall if  
8 in the first email here you were referring to  
9 the November 13th, 2017, meeting which  
10 includes some of the recipients on the email  
11 chain? I know you said you didn't remember  
12 that meeting, but just to check if that  
13 refreshes your recollection.

14 A Clearly I must have been referring  
15 to it because that is the meeting that was  
16 just a couple days after I sent the email. I  
17 know of no other meeting that I could have  
18 been referring to.

19 Q Why this group of individuals? Why  
20 did you email these specific people?

21 MR. MARUTOLLO: Objection. One note  
22 I would make is to the extent there's anything

1 related to attorney-client privilege with the  
2 chief counsel, I would direct you not to  
3 answer on those grounds, but otherwise you can  
4 answer the question.

5 A So these thoughts I was sending to  
6 these people because I was supposed to be  
7 going to that meeting, I gather, because I'm  
8 on the invite list. I assume I went, though I  
9 don't recall that I did, but I assume that  
10 this chart in attachment A of the  
11 interrogatories document, Exhibit 109, is an  
12 accurate reflection of who was invited to that  
13 meeting. But if that's accurate, Kathy Nuebel  
14 Kovarik was also invited. I had a plus one as  
15 well in addition. I may have taken Craig  
16 Symons with me. That would explain why I'm  
17 emailing them. Tracy Short, Dimple Shah was  
18 also invited to the meeting, and Tracy Short  
19 would have necessarily been at every such  
20 meeting because he was counsel to the  
21 Secretary on immigration matters.

22 Q Okay. So we had talked about the --

1        your views essentially on the sort of reality  
2        of terminated TPS beneficiaries returning to  
3        their country.

4            A        Uh-hmm.

5            Q        Here in the email you write -- so,  
6        "That doesn't mean as I read it that TPS must  
7        stay in place if Haiti is able to show that it  
8        can't handle the return of all 58,000 TSP  
9        beneficiaries at the same time and have jobs  
10      waiting for them. It means, as I read it,  
11      that TPS remains in place only if Haiti is  
12      unable to accept anyone at all."

13                So is that an accurate  
14      representation of your view on that portion of  
15      the statute?

16                MR. MARUTOLLO: Objection to the  
17      extent that it calls for internal government  
18      deliberations. And also objection on the  
19      grounds of vagueness, but you can answer.

20                A        Well, my -- my email refers to  
21      section 244(b)(1)(B)(ii), and that was the  
22      prong that I discussed earlier when we were

1 talking about this where it says -- this is  
2 the environmental prong. And one of the  
3 requirements for being designated for TPS  
4 under the environmental prong is that the  
5 foreign state is unable to temporarily 'handle  
6 adequately' a return to the state of aliens --  
7 to the state -- who are nationals to the  
8 state.

9 So I was talking about that here,  
10 and -- but, you know, I think in an informal  
11 fashion I was trying to talk about how any  
12 potential designation of Haiti under that  
13 prong, we would necessarily have to address  
14 the handle adequately point.

15 And as it is, that was in fact not  
16 the prong that was being referenced in the  
17 designation of Haiti. Haiti was coming under  
18 244(b)(1)(C), which was the extraordinary and  
19 temporary conditions.

20 So, my views here on the  
21 interpretation of what it means for a country  
22 to be able to handle adequately the return of

1       its nationals isn't really on point. I mean,  
2       it's talking about a totally different prong,  
3       but, you know, to the extent it would come up,  
4       I wanted people to know what my views were on  
5       what -- how that prong should be interpreted  
6       -- how that part of the prong should be  
7       interpreted.

8                   Q       And did the decision memo that you  
9       signed, did it contemplate redesignating Haiti  
10      under 244(b) (1) (B) (ii) ?

11                  MR. MARUTOLLO: Objection. I think  
12      the memo speaks for itself, but you can  
13      answer.

14                  A       No, because, as I recall -- give me  
15      one second. In the signed memo, Exhibit 108,  
16      at the bottom of page 1 where it says,  
17      "Haiti's TPS Designation," the last sentence  
18      that starts there, it says, "The designation"  
19      -- and then turning to page 2, "was based on  
20      extraordinary and temporary conditions rather  
21      than environmental disaster because the  
22      Haitian government had not requested

1 designation for TPS - a statutory requirement  
2 for a designation based on an environmental  
3 disaster."

4 So that -- that was the case. They  
5 did not ask for designation pursuant to that  
6 prong.

7 Q Right.

8 A So the -- the analysis that I -- the  
9 musings that I proffer in my email from  
10 November 10th were not applicable to the  
11 considerations in the memo.

12 Q Okay. And since it wasn't  
13 applicable or in play, what prompted your --  
14 your discussion of this hypothetical scenario?  
15 I know there's no email before yours, but ...

16 A No.

17 MR. MARUTOLLO: Objection. Also to  
18 the extent this is a question about -- that  
19 postdates the memo that's Exhibit 108. But,  
20 in any event, you can answer the question.

21 A I send a lot of emails like this  
22 where I just have thoughts on issues of

1 immigration law. I think this was the  
2 244(b)(1)(B)(ii) issue had just for a long  
3 time been rankling in my head and I just  
4 wanted to share my thoughts on that. I didn't  
5 anticipate that I would actually come up in  
6 the meeting because -- because that was not  
7 the prong that Haiti was being considered  
8 under. So it was really more apropos of  
9 nothing but just my musings on how  
10 244(b)(2)(B) should be interpreted.

11 Q Is that an accurate reflection of  
12 your views on how 244(b)(1)(B)(ii) should be  
13 interpreted, that essentially TPS will remain  
14 in place only if the country is unable to  
15 accept any of its nationals at all?

16 MR. MARUTOLLO: Objection. Again,  
17 to the extent that this calls for internal  
18 government deliberations, is not part of even  
19 the internal USCIS memo which itself is  
20 internal government deliberations, but this  
21 certainly is deliberative materials. But  
22 given that objection and also on vagueness

1 grounds, you can answer the question.

2 A I think that my -- the thoughts that  
3 I express in that email and in the subsequent  
4 comments are actually my -- my own internal  
5 deliberations within myself. These are just  
6 thoughts I have, you know. At some point  
7 maybe a real lawyer should look at them and  
8 determine if I actually make sense. But these  
9 are just, you know, initial musings on how  
10 244(b)(1)(B)(ii) should be looked at. But,  
11 again, this is just an informal email amongst  
12 colleagues, you know, with no direct  
13 applicability to the decision at hand, which  
14 is on a different prong altogether. It's  
15 really no more than that.

16 Q And just, I guess, to compare the  
17 two -- the two provisions, so one speaks in  
18 terms of the foreign state being unable to  
19 handle adequately the return of the aliens,  
20 and that's (B)(ii). And (C) speaks of  
21 "conditions in the foreign state that prevent  
22 aliens who are nationals of the state from

1 returning to the state in safety."

2 What do you view as the sort of  
3 differences, substantive differences between  
4 those two provisions?

5 MR. MARUTOLLO: Objection, again, to  
6 the extent that this is a fact witness, not a  
7 30(b) (6) witness, but you can answer the  
8 question.

9 A These are just my personal  
10 reflections. They're not -- it's not the  
11 position of the agency. I defer to their  
12 better legal minds than mine. But as I  
13 interpret the statute under B where it talks  
14 about handle adequately the return, the entire  
15 environmental prong is imagining -- I think  
16 Congress is contemplating a situation where  
17 the country in question has suffered great  
18 disruption to its infrastructure because of a  
19 flood, an earthquake or some other kind of  
20 horrific environmental disaster. And as a  
21 consequence, it is physically difficult for  
22 the country to handle the return of people.

1 There's no, you know, airports. There's no  
2 houses for them to live in, I suppose.

22 Q So, in other words, the nationals

1 could physically return but might not be able  
2 to do so safely, I think you said. Is that  
3 right?

4 MR. MARUTOLLO: Objection. I think  
5 that mischaracterizes his testimony, and the  
6 director's already answered that question, but  
7 you can answer it a second time if you would  
8 like.

9 MS. WEBB: I'll withdraw it. I was  
10 just summarizing for myself.

11 Q So you did -- you did mention that  
12 you didn't have any specific factors that  
13 would -- that would contribute to the lack of  
14 safety in returning, but in your experience,  
15 in your job, what are some of the factors that  
16 would prevent safe return for those aliens?

17 MR. MARUTOLLO: Objection. You can  
18 answer.

19 A Well, let me see what I said here.  
20 I think it could be any of the  
21 things that are actually in the second prong,  
22 in the environmental prong, any of those

1       things, an earthquake, a flood, epidemic,  
2       disease, any of those things are things which  
3       I just talked about could be things which are  
4       covered in both prongs. They could be things  
5       which affect the ability of the country to  
6       adequately handle the return of people, but  
7       there could also be things looking at their  
8       safety. The epidemic I think would be a very  
9       good example. If there were a raging epidemic  
10      across the entire nation that -- you know,  
11      like Ebola, as I recall, I forget which  
12      countries in Africa were designated for a  
13      while with TPS because of that.

14           Q       Right.

15           A       There's an example. The -- like I  
16      said, it could be something which really is  
17      both, but for whatever reason, the country may  
18      not specifically qualify under the  
19      environmental prong, as in the case of Haiti,  
20      because the government didn't formally  
21      request, they still qualify under (C), under  
22      extraordinary and temporary conditions.

1 Q Would safety include the inability  
2 to reabsorb a flood of nationals again?

3 MR. MARUTOLLO: Objection. Calls  
4 for internal government deliberations, and  
5 also it's been asked and answered, but you can  
6 answer again.

7 A I mean, that would really depend on  
8 the specific facts of what exactly that meant.  
9 It would be very fact dependent.

10 Q But you made the determination here  
11 in the decision memo that Haiti was able to  
12 absorb -- to reabsorb the TPS beneficiaries,  
13 correct?

14 MR. MARUTOLLO: Objection. Asked  
15 and answered. You can answer.

16 A I made the determination -- rather,  
17 I made the recommendation to the Secretary  
18 that she should terminate based on our  
19 assessment at USCIS that the people could  
20 return in safety, which is, again, not  
21 necessarily the same thing as being able to  
22 adequately handle the return.

1 Q One other question. The November  
2 12th email that you sent where you were  
3 contemplating a TPS reform bill and you say,  
4 "but seems to me that TPS should only" --  
5 excuse me -- "should cover only nationals of  
6 the affected country who are lawfully in the  
7 U.S. at the time of designation."

8 Was your view -- was that limited to  
9 244(b)(1)(B)(ii) or was that -- did you --  
10 were you referring to the whole statute when  
11 you wrote that, all categories of designation,  
12 I should say?

13 MR. MARUTOLLO: Objection. You can  
14 answer.

15 A I was referring to the entire  
16 statute. This is my, you know, personal  
17 belief of how the statute could be reformed.  
18 Clearly Congress hasn't done that, but the  
19 statute as it stands, that was scrupulously  
20 enforced. That's just my personal belief on  
21 how they should change it.

22 Q Okay. So as it stands, the statute

1 does not look at nationals who are or  
2 foreigners who are unlawfully in the United  
3 States at the time of designation, correct?

4 MR. MARUTOLLO: Objection. The  
5 document speaks for itself, and also that  
6 calls for a legal conclusion. You can answer  
7 the question.

8 A Yes, it is my understanding that the  
9 statute covers all aliens from the designated  
10 country regardless of their immigration  
11 status.

12 Q I want to ask you just a few more  
13 questions about the second portion of  
14 subsection (C) that we were discussing earlier  
15 where it has this qualifier, "Unless the  
16 Attorney General, the Secretary of Homeland  
17 Security, finds that permitting the aliens to  
18 remain temporarily in the United States is  
19 contrary to the national interest of the  
20 United States."

21 In your view, what does national  
22 interest mean there?

1 MR. MARUTOLLO: Objection. Again,  
2 this is a fact witness, not a 30(b)(6)  
3 witness. Also, objection to the extent it  
4 calls for a legal conclusion, but you can  
5 answer the question.

6                   A        Well, it's -- that is a term that is  
7                   repeated throughout the U.S. code and, in  
8                   particular, in multiple places in the  
9                   immigration part of the U.S. code. It could  
10                  refer to -- it could include considerations of  
11                  potential impact on national security, which  
12                  is one element of something in the national  
13                  interest, public safety. It could -- I could  
14                  imagine it could even -- it could conceivably  
15                  include economic impact, economic safety.  
16                  It's a very, very broad term, but those are  
17                  the principal ones that come to mind.

18 Q One more question. So in the -- on  
19 page 4 of the document you have, there's a  
20 subsection entitled "Periodic review," and it  
21 says, "At least 60 days before end of the  
22 initial period of designation, and any

1 extended period of designation, of a foreign  
2 state (or part thereof) under this section the  
3 Attorney General, after consultation with  
4 appropriate agencies of the government, shall  
5 review the conditions in the foreign state (or  
6 part of such foreign state) for which a  
7 designation is in effect under this subsection  
8 and shall determine whether the conditions for  
9 such designation under this subsection  
10 continue to be met."

11 In your view, if a country is  
12 designated under subsection (C), which  
13 includes those factors about temporary  
14 conditions that prevent safe return and the  
15 national interest of the United States, in  
16 your view does -- should -- are those  
17 considered in this periodic review process  
18 that's laid out in the statute or -- apologies  
19 for the compound -- or should the statute be  
20 read just as it is, essentially to review the  
21 conditions in the foreign state?

22 MR. MARUTOLLO: Objection. Compound

1 question. It also is vague and also calls for  
2 a legal conclusion. You can answer.

3 A Well, the periodic review provision  
4 does say that the Secretary "shall determine  
5 whether the conditions for such designation  
6 under this subsection continue to be met." So  
7 as I read that, the Secretary should look back  
8 to see and examine those conditions for  
9 designation, which would include both the  
10 extraordinary and temporary conditions aspect  
11 and the -- if there exists any, and national  
12 interest concerns to letting them remain.

13 Q Okay, thank you.

14 Then just one more question about  
15 this email.

16 So you estimated that 56,000 of the  
17 58,000 were in the U.S. unlawfully before the  
18 earthquake and that you doubted that any of --  
19 well, right, all in there -- were here  
20 unlawfully before the earthquake. I was just  
21 wondering what you based that view on.

22 MR. MARUTOLLO: Objection. Asked

1 and answered. You can answer.

2 A I said I would wager 56,000 of the  
3 58,000. I don't know for a fact that that's  
4 true, but based on -- based on my experience  
5 and general understanding of the populations  
6 that have received TPS over the many years for  
7 Haiti and for Central America countries in  
8 particular, a large percentage of the  
9 underlying population -- of the population  
10 was, in fact, already here unlawfully. So my  
11 point was that if a large percentage of the  
12 population of -- if the large -- if a large  
13 percentage of the TPS population is already in  
14 the country unlawfully, it is unlikely that --  
15 and had been so for a long time, it is  
16 unlikely that they would return willingly if  
17 TPS were terminated for them as they did not  
18 demonstrate any such inclination when they  
19 didn't have TPS before.

20 So I think it's a -- it's not an  
21 unreasonable supposition.

22 Q We're nearing the end.

1 (Exhibit 111 was marked for  
2 identification and attached to the deposition  
3 transcript.)

## 4 A (Document review.)

5                   Okay, I read the document.

6 Q Okay. Just bear with me for just  
7 one second.

19 A No, I don't recall -- I remember it  
20 now that I'm reading it. So, yes, now I do.

21 Q Okay. She says, "Got the briefing  
22 memo and will forward an email from Tan Smith

1 in a bit."

2 Do you know what she's referring to  
3 there when she says "briefing memo"?

4 A Whenever there is a meeting with the  
5 Secretary on anything, the Secretary has a  
6 briefing memo for that meeting. Sometimes  
7 it's one page. Sometimes it's 20 pages. It  
8 all depends on the nature of the meeting. I  
9 think what she's referring to here is the  
10 briefing memo that -- for the Secretary for  
11 that meeting the next day.

12 Q Okay.

13 A Yes.

14 Q And then she sends the first  
15 attachment, and I apologize, I'm not sure we  
16 have all of the attachment. She says, "The  
17 first attachment here is what DHS PLCY came up  
18 with but two key additions from my staff.  
19 This 'USCIS Annotated' doc has (1) a summary  
20 of the country conditions and USCIS's  
21 assessment (drawn from the D1-AS1 memo)."

22 Do you know what she's referring to

1 there with D1-AS1 memo?

2 MR. MARUTOLLO: Objection. Calls  
3 for speculation. Also, this is an internal  
4 government deliberation. You can answer to  
5 the extent you know.

6 A Yes, I believe so. D1 is the  
7 abbreviation typically for director of USCIS.  
8 AS1 would be Acting Secretary, in this case,  
9 Acting Secretary Duke.

10 Q Okay. And do you know what memo  
11 she's referring to that has the summary of  
12 country conditions and USCIS's assessment?

13 MR. MARUTOLLO: Same objection. You  
14 can answer.

15 A I assume she's referring to the  
16 November 3 memo, Exhibit 108.

17 Q Okay. Okay. And then she says --  
18 she mentions some information to reinforce  
19 former Secretary Kelly's directive and then  
20 says, "The new stuff is pasted below here,  
21 too." Then it says, "Country Conditions and  
22 USCIS Assessment."

1 So are these bullet points a summary  
2 of what's in the decision memo that you  
3 signed, that November 3rd decision memo you  
4 signed?

5 MR. MARUTOLLO: Objection, again, to  
6 the extent that the memo speaks for itself and  
7 the email speaks for itself, but you can  
8 answer.

9                    0        Or in the packet, I should say.

10           A     I believe these bullet points are  
11    points just lifted directly out of that  
12   November 3rd memo.

1 declared, regardless of whether they were ever  
2 intending to return to their country?"

3 Then you go on to say, "All that  
4 need be shown, I think, is that the country's  
5 ability to handle returns is back to what it  
6 was pre-TPS."

7 So here -- so obviously she's  
8 emailed you about the decision memo that you  
9 signed. Did this -- did these points bear on  
10 analysis of that decision memo?

11 MR. MARUTOLLO: Objection. Oh,  
12 first, just -- there are two sentences that  
13 were omitted from your recitation of the  
14 email.

15 MS. WEBB: Well, I'm happy to read  
16 those. I just --

17 MR. MARUTOLLO: That's fine. I just  
18 want to put for the record, just so it's  
19 clear, from Exhibit 111. But, additionally, I  
20 would object on the grounds again that this is  
21 an internal government deliberation, but you  
22 can answer the question.

1           A     So I think that -- well, as I  
2     understand your question, you're asking --  
3     were you asking -- are you asking are the  
4     bullet points you see that she's adducing here  
5     in some way -- I guess repeat your question.

6           Q     Sure.

7           A     Yes.

8           Q     So she emails you the bullet points  
9     from the memo. She's sort of talking about  
10    the memo that you had signed and you respond  
11    with some points about reintegration of  
12    Haitians, right, at one time, sort of as we've  
13    been discussing versus, you know, a trickle.  
14    And you mention the country's ability to  
15    handle returns is back to what it was pre-TPS.

16               So my question is, are those points  
17    that you're making relevant to the decision  
18    memo or are you talking about some other  
19    portion of the statute?

20           A     Yes --

21               MR. MARUTOLLO: Objection, but you  
22    can answer.

1           A       -- so now that I read this, I'm  
2       remembering now, the -- I think one of the  
3       issues that kept coming up in the context of  
4       all these TPS decision was it wasn't really a  
5       legal point. It was more of a policy point,  
6       maybe, or -- it was more of an advocacy point.  
7       People who opposed the termination of TPS,  
8       many advocates who opposed the termination of  
9       TPS would often say, well, one reason to not  
10      terminate TPS is because country X could never  
11      possibly reabsorb X tens of thousands or X  
12      hundreds of thousands of people all at once.  
13      And even though that is not exactly the prong  
14      -- the adequately handle point is not the  
15      prong upon which the Secretary was deciding  
16      whether or not to extend or terminate the  
17      designation for Haiti, the point kept getting  
18      made by advocates. And I think my email is  
19      reacting to that. I was concerned that nobody  
20      within the agency was really addressing that  
21      point and that if -- even though it is not  
22      strictly one of the legal criteria, it is a

1 point that needed to be talked about and in  
2 one way or another addressed.

3 So I suppose what you -- what you  
4 could -- you could look at my response to her  
5 email basically saying, yes, okay, got it.

6 But you know there's this other thing, which  
7 we have to remember to raise if it comes up or  
8 if appropriate in the meeting. It doesn't --  
9 it is not actually part -- it is not actually  
10 one of the factors that should relate to a --  
11 to the extraordinary and temporary condition  
12 analysis, but it is something that we need to  
13 talk about because advocates keep raising that  
14 as a reason to not terminate or are for  
15 extension.

16 Q I'll see if you remember this  
17 meeting, if I can find it just really quickly  
18 to see.

19 This is Exhibit 112, I believe.

20 Just take a look. This is more recent, but I  
21 just want to see if you remember this -- this  
22 meeting.

1 (Exhibit 112 was marked for  
2 identification and attached to the deposition  
3 transcript.)

## 4 A (Document review.)

5 I've reviewed the document.

6 Q I 'm sorry?

7 A I've reviewed it.

8 Q Okay. I'm just checking to see if  
9 you remember this meeting about Haiti TPS.

10 A No, I don't.

11 Q Or a conference call. Okay.

12                   A        I would note that they -- did they  
13 -- yes, it got to my right email address. I  
14 thought it was a different email address.

15 It's the right one.

16 MS. WEBB: One more. That should be  
17 the end of the exhibits.

18 (Exhibit 113 was marked for

identification and attached to the deposition transcript.)

21 A (Document review.)

1 Q Okay.

2 So I think we've been over it, but  
3 I'll just ask again because now we're in 2018,  
4 April 27, 2018. So Kaitlin Stoddard, what was  
5 her role as of spring of this year?

6 A So, she was the -- she's -- the same  
7 role she has now. She was the -- in the  
8 counselor position.

9 Q Okay.

10 A In USCIS.

11 Q What about Aaron Calkins?

12 A Aaron Calkins at that time, he had  
13 just come on as the head of legislative  
14 affairs for USCIS.

15 Q Okay. So in the first email he's  
16 emailing a group of -- are these all USCIS  
17 officials, if you know?

18 A Yes. All USCIS people.

19 Q Okay. And just -- these are  
20 summaries from some congressional hearings.

21 A Uh-hmm.

22 Q And then later that the day you

1 respond, "With respect to this, we have to  
2 reconcile the decision to terminate TPS in  
3 Haiti with recently released information that  
4 suggests it should not have been terminated."

5 So do you recall what you were  
6 referring to with respect to the recently  
7 released information that suggests it should  
8 not have been terminated?

9 MR. MARUTOLLO: Objection. To the  
10 extent I would instruct the witness not to  
11 reveal anything that was conveyed to him in an  
12 attorney-client privilege, given the date here  
13 after litigation has occurred, so with that  
14 instruction in mind, you can answer the  
15 question.

16 A I think -- as I recall, what I was  
17 reacting to here was -- I think it may have  
18 been a media story where someone had leaked  
19 some of these documents, including the  
20 underlying RAIO report and some other things.  
21 And as I recall the news stories were accusing  
22 department leadership of having -- of having

1 disregarded input from career staff. I think  
2 that's -- I think that's what I was reacting  
3 to. And -- yes.

4 Q Okay. Okay. So it was the media  
5 coverage essentially was the recently released  
6 information, or was it internal agency  
7 documents?

8 MR. MARUTOLLO: Again, I'm going to  
9 object, and to the extent it's anything that  
10 conveys -- information conveys via your  
11 attorney or attorneys at that point, I would  
12 instruct you not to answer, but otherwise you  
13 can answer the question.

14 A To the best of my recollection, this  
15 -- I am referring here to a news story which  
16 either quoted from or referred to internal  
17 agency documents that had somehow been leaked,  
18 yes.

19 Q Okay. Okay. Then you go on to say,  
20 "I think we need to get Chad a one-pager  
21 explaining for S1 why there is no  
22 inconsistency between the underlying RAIO

1 report and the formal USCIS recommendation to  
2 terminate. The underlying memo talked about a  
3 lot of things that had nothing to do with the  
4 earthquake and its after-effects." Then you  
5 say, "The main points, as I recall: ICE is  
6 removing people to Haiti again at the same  
7 rate as pre-earthquake. The UN group packed  
8 up and left; and only a small percentage of  
9 Haitians are still living in those tent  
10 camps."

11 So just to check, S1 there is  
12 Secretary of Homeland Security, correct?

13 A Correct.

14 Q So you say -- when you say "The  
15 underlying memo talked about a lot of things  
16 that had nothing to do with the earthquake and  
17 its after-effects," what did you mean by that?  
18 I should -- let me ask you first, by  
19 "underlying memo," are you referring to  
20 decision memo that you signed, that November  
21 memo we discussed?

22 A I'm referring to the -- the decision

1 memo as I said -- as we talked about before  
2 was the cover memo.

3 Q Right.

4 A I'm talking about the underlying  
5 attachment.

6 Q Right.

7 A Which was the RAIO research piece.

8 Q Okay. The packet.

9 A Uh-hmm.

10 Q Okay. And so when you say it  
11 "talked about a lot of things that had nothing  
12 to do with the earthquake and its  
13 after-effects," what did you mean by that?

14 MR. MARUTOLLO: Objection. You can  
15 answer.

16 A The -- what I meant was that the --  
17 as I recall, the news stories were talking  
18 about -- that I was reacting to here were  
19 talking about how the agency leadership at  
20 USCIS, including myself, had wantedly  
21 disregarded input from career staff, and --  
22 which is not true. And one of the -- what I

1       thought needed -- what I'm saying here is --  
2       and the Secretary had read these stories.  
3       Everyone had read the story. And I thought  
4       that it was appropriate to send to Chad, who  
5       is Chad Wolf, the Chief of Staff of the  
6       department, a paper for her benefit,  
7       explaining that the story is inaccurate and  
8       that it is not true.

9                   So the -- what I'm trying to say  
10       here is that the -- that research paper, and  
11       indeed the cover memo itself, talked about  
12       other things, you know, the hurricanes and  
13       other things that happened that were not  
14       directly related to the earthquake. But that  
15       that didn't change the fact that the  
16       earthquake-based designation should be  
17       terminated. What I'm not saying here is that  
18       those other things were irrelevant. They were  
19       clearly in the memo that we talked about  
20       earlier, we do mention them. We cite them.  
21       And then we say, but with respect to potential  
22       redesignation or extension under new grounds,

1 but we say, you know, yes, those things  
2 happened. The hurricane happened in 2016, but  
3 it does not rise to the level of a new  
4 designation.

5 So, again, what I'm saying here is,  
6 the Secretary should be made aware that we did  
7 not do anything wrong here. We correctly took  
8 the information that the staff prepared in the  
9 underlying report. We concluded that, indeed,  
10 the earthquake-based designation should  
11 terminate, but I'm not saying that the other  
12 information that they generated was  
13 irrelevant. It was manifested so because we  
14 talk about it and refer to it in the cover  
15 memo that I sent to the Secretary, whenever  
16 that was, earlier in the year, early in the  
17 previous year.

18 Q Okay. But when you say there's no  
19 inconsistency between that underlying memo and  
20 the formal recommendation to terminate, and  
21 then you say, "The underlying memo talked  
22 about a lot of things that had nothing to do

1 with the earthquake and its after-effects,"  
2 where is the inconsistency that you're -- that  
3 you're sort of referring to between the memo  
4 and the recommendation?

5 MR. MARUTOLLO: Objection. Vague.

6 Also asked and answered. You can answer.

7 A I think the confusion was that -- it  
8 was based on the mischaracterization by the  
9 media, and I wish I could remember what the  
10 outlet was, that evidence had been asserted  
11 that unequivocally backed extending the TPS  
12 for Haiti, and that I or other people in the  
13 USCIS leadership discarded that and didn't  
14 even consider it. And the inconsistency that  
15 I'm talking about here is -- I'm saying we  
16 need to tell the Secretary that there is no  
17 inconsistency between the underlying Refugee  
18 Asylum and International Operations report and  
19 the formal USCIS recommendation to terminate,  
20 which was on the top memo. There was no  
21 inconsistency because the -- we did take into  
22 account the evidence that they -- that they

1 produced in the underlying report, and I think  
2 fairly represented that to the Secretary.

3 With respect to the facts relating  
4 to the earthquake-based designation, I think  
5 the media accounts that I was reacting to made  
6 it sound like we didn't even take into account  
7 anything negative regarding the  
8 earthquake-based designation. We did.

9 Clearly so. It was an attachment to the  
10 underlying document that went to the  
11 Secretary.

12 So that's what I'm trying to --  
13 that's what I'm asking people to prepare for  
14 the Secretary so she understands that we  
15 didn't, you know, somehow frustrate the proper  
16 process.

17 Q Okay. So, at this point, the  
18 Secretary had made her decision, correct, to  
19 terminate?

20 MR. MARUTOLLO: Objection. Vague.

21 Q By April 2018, to terminate Haiti  
22 TPS, correct?

1           A     As I recall, that -- yes, that  
2     decision had been -- had been made long  
3     before.

4           Q     Right.

5           A     Back in January, I think, was when  
6     the Fed Reg Notice came out, as I recall,  
7     January of 2018.

8           Q     Okay. Okay.

9                   And are you aware of the grounds  
10    that she cited in her decision for making that  
11    termination?

12          A     As I recall from the -- as I recall,  
13    there was Federal Register Notice in --  
14    somewhere in January 2018, I think, and as I  
15    recall, in that Fed Reg Notice, many of the  
16    same grounds that we adduced in the memo we  
17    sent to her were included.

18          Q     Okay. Are you aware that she has  
19    taken the position that the determination  
20    should be based on whether the temporary  
21    conditions caused by the originating event are  
22    the only -- the only factor to consider as

1       opposed to intervening events or subsequent  
2       events?

3                    MR. MARUTOLLO: Objection.  
4                    First, that assumes facts not in  
5       evidence. Mischaracterizes evidence. I would  
6       also object to the extent it calls for  
7       speculation as to what the Acting Secretary  
8       who was deciding.

9                    Also object on the grounds that the  
10      Federal Registered Notice speaks for itself  
11      and also to the extent that there's a  
12      document, the document be shown to the  
13      witness.

14                   MS. WEBB: Sure.

15                   Q       It's the press release. I'm happy  
16      -- I'm happy to show it to you if that would  
17      help, but I was just wondering generally if  
18      you're aware of her official position in that  
19      respect.

20                   MR. MARUTOLLO: Also, I just object  
21      even with respect to this press release, my  
22      understanding is that I believe this had been

1 a deliberative -- a document marked as  
2 deliberative material.

3 I'm not certain that this was the  
4 final press release that was ultimately  
5 issued, but you can certainly ask questions  
6 about it.

7 (Exhibit 114 was marked for  
8 identification and attached to the deposition  
9 transcript.)

10 A (Document review.)

11 Okay, I've reviewed the press  
12 release.

13 Q Okay. I would just point you to the  
14 second paragraph, which says -- I won't read  
15 the whole thing, but -- "The decision to  
16 terminate TPS for Haiti was made after review  
17 of the conditions upon which the country's  
18 original designation were based and whether  
19 those extraordinary but temporary conditions  
20 prevented Haiti from adequately handling the  
21 return of their nationals, as required by  
22 statute. Based on all available information,

1 including recommendations received as part of  
2 an inter-agency consultation process, Acting  
3 Secretary Duke determined that those  
4 extraordinary but temporary conditions caused  
5 by the 2010 earthquake no longer exist. Thus,  
6 under the applicable statute, the current TPS  
7 designation must be terminated."

8 So are you familiar with that  
9 position that the Secretary has taken or that  
10 interpretation of the statute that she's made?

11 MR. MARUTOLLO: Objection. Compound  
12 and vague. You can answer to the extent  
13 you're aware of it and also without divulging  
14 any attorney-client communications.

15 A Yes, I'm generally aware of that  
16 position.

17 Q Okay. And are you aware that it is  
18 in some tension with, I guess, your own view  
19 that you've expressed here today in terms of  
20 how you reviewed the material and analyzed the  
21 issues in signing the decision memo?

22 MR. MARUTOLLO: Objection. I think

1 that's argumentative and also calls for a  
2 legal conclusion. Vague as well, but you can  
3 answer.

4 A I don't -- I don't think it is a  
5 tension. Assuming this is the final version  
6 of what was sent out, the statement reads,  
7 "The decision to terminate TPS for Haiti was  
8 made after a review of the conditions upon  
9 which the country's original designation were  
10 based and whether those extraordinary but  
11 temporary conditions prevented Haiti from  
12 adequately handling the return of their  
13 nationals," et cetera.

14 So, it is true, the conditions which  
15 relate to the designation for the earthquake  
16 no longer exist in the assessment of the  
17 Secretary based upon the recommendation and  
18 information we gave her.

19 That doesn't mean that she didn't  
20 also consider whether there could be a new  
21 designation based on something else. And as  
22 is clear from the memo that we sent to her, we

1 did tell her about that and that that was an  
2 option, a possibility, which I guess it was  
3 the Acting Secretary who eventually signed it,  
4 and that was not selected.

5 So my position would be that it is  
6 not -- there is no tension between saying that  
7 a given designation of TPS should be  
8 terminated because the grounds upon which that  
9 designation was based no longer exists and at  
10 the same time to say -- and the country  
11 shouldn't get TPS on any other basis either  
12 because -- because that's a separate -- that's  
13 a separate decision. It's -- they are two  
14 separate things. So I don't think there is a  
15 tension or a problem.

16 Q Okay. So I guess leaving aside the  
17 potential decision to redesignate and just  
18 focusing on the extension determination, is it  
19 your view that she considered the  
20 extraordinary and temporary conditions caused  
21 by the 2010 earthquake and also the other  
22 subsequent conditions, such as the hurricanes

1 and the other sort of infrastructure problems  
2 that you had looked at in reviewing and  
3 signing the decision memo?

4 MR. MARUTOLLO: Objection. Again,  
5 calls for speculation, and also asked and  
6 answered, the last question, but you can  
7 answer again.

8 A Well, all I know is that that is  
9 what I sent her. What we presented to her was  
10 the memo and the packet of attachments, which  
11 talked about also sorts of things, not just  
12 things related to the earthquake and its  
13 after-effects, but the hurricanes and the  
14 other items that we discussed. So, I mean,  
15 that's for sure. We sent her all that  
16 information.

17 Q We're almost done. I'm just trying  
18 to finish up.

19 Do you recall at any point while  
20 you've been director of USCIS meeting with or  
21 conferring with anyone from any immigration  
22 nonprofit groups to talk about Haiti TPS?

1 MR. MARUTOLLO: Objection. I think  
2 that's asked and answered, but you can answer.

3 A To talk about TPS generally or Haiti  
4 TPS?

5 Q TPS generally, let's say.

6 A I recall meeting with the Sisters of  
7 Mercy, the religious organization with people  
8 all over Central America to talk about TPS for  
9 El Salvador -- rather, for the various  
10 countries that were being considered some  
11 months ago. I recall meeting with them twice,  
12 both times with the Secretary. I think both  
13 times with the Secretary. At least one time  
14 with the Secretary for sure. I can't think of  
15 any other groups at this moment.

16 Q Okay. Do you know who Robert Law  
17 is, Robert Law?

18 A Yes.

19 Q Who is he? What is his position?

20 A Robert Law is a -- he works in the  
21 Office of Policy and Strategy at USCIS. He is  
22 a political appointee. He started there

1       sometime in early 2017, and he acts as kind of  
2       a counselor to Kathy Nuebel Kovarik.

3           Q       Did you know him before he assumed  
4       that position?

5                    MR. MARUTOLLO: Objection. You can  
6       answer.

7           A       I knew of him and I met him a couple  
8       of times because, in his previous position, he  
9       was the government relations coordinator for  
10      FAIR. When I was on the Hill, detailed to the  
11      Office of Senator Grassley -- rather, to the  
12      Judiciary Committee, like I think once or  
13      twice during that two-year period, he came by  
14      in the normal course of his duties to talk to  
15      the Senator on, you know -- or his staff on  
16      one or some other matters. So I saw him -- I  
17      knew him. He came into the office, and then  
18      he would move on to wherever his -- whoever he  
19      was talking to next.

20           Q       Okay. Do you recall whether you  
21      discussed TPS with him during any of those  
22      meetings?

1 MR. MARUTOLLO: Objection.

2 Q Or whether TPS was discussed at any  
3 of those meetings?

4 MR. MARUTOLLO: You can answer.

5 A I don't recall ever talking TPS with  
6 him during those times when I saw him on the  
7 Hill, no.

8 MS. WEBB: Let's take a break. I'll  
9 look over -- I probably am done.

10 MR. MARUTOLLO: Just note for the  
11 record we would ask for a copy of the  
12 transcript for the witness to read and sign.

13 MS. WEBB: Sure.

14 THE VIDEOGRAPHER: We're going off  
15 the record at 3:58.

16 (A brief recess was taken.)

17 THE VIDEOGRAPHER: We're back on the  
18 record at 4:07.

19 BY MS. WEBB:

20 Q Okay. Just one more question, which  
21 is what did you do just to prepare for this  
22 deposition today?

1                   MR. MARUTOLLO: Objection to the  
2 extent not revealing any attorney-client  
3 communications, you can answer.

4                   A       To prepare for today's deposition I  
5 met with my attorneys.

6                   Q       Okay. Did you review -- sorry.

7                   A       No.

8                   Q       I was going to ask, did you review  
9 any documents?

10                  MR. MARUTOLLO: I would just object  
11 only to the extent that the documents that  
12 were used to refresh his recollection, but you  
13 can answer.

14                  A       The only document I reviewed was the  
15 final signed memo from -- what is Exhibit 108,  
16 the November 3rd memo. That was it.

17                  Q       Did you discuss the deposition with  
18 anyone else?

19                  A       I discussed the fact that I was  
20 going to be deposed with my staff to let them  
21 know where I was going to be today, but  
22 otherwise I discussed the substance with

1 nobody.

2 MS. WEBB: Okay. That's all I have.

3 MR. MARUTOLLO: Thank you.

4 MS. WEBB: Okay.

5 THE VIDEOGRAPHER: The deposition is

6 concluded. We're going off the record at

7 4:08.

8

9 (Whereupon, the proceeding was  
10 concluded at 4:08 p.m.)

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1 DEPOSITION ERRATA SHEET

2 Assignment No. 450087

3 Case Caption: Patrick Saget vs. Donald Trump

4

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury that I have read  
7 the entire transcript of my Deposition taken in the  
8 captioned matter or the same has been read to me, and  
9 the same is true and accurate, save and except for  
10 changes and/or corrections, if any, as indicated by me  
11 on the DEPOSITION ERRATA SHEET hereof, with the  
12 understanding that I offer these changes as if still  
13 under oath.

14

15

16 SIGNED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

17

18

19 LEE FRANCIS CISSNA

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IN RE: PATRICK SAGET V. DONALD TRUMP

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(DATE)

(SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER

2

3 I, Michele E. Eddy, Registered Professional  
4 Reporter and Certified Realtime Reporter, the court  
5 reporter before whom the foregoing deposition was  
6 taken, do hereby certify that the foregoing transcript  
7 is a true and correct record of the testimony given;  
8 that said testimony was taken by me stenographically  
9 and thereafter reduced to typewriting under my  
10 supervision; and that I am neither counsel for,  
11 related to, nor employed by any of the parties to this  
12 case and have no interest, financial or otherwise, in  
13 its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my  
15 hand and affixed my notarial seal this 20th day of  
16 December, 2018.

17 My commission expires July 14, 2022

18

19

20

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21 MICHELE E. EDDY

22 NOTARY PUBLIC IN AND FOR

THE DISTRICT OF COLUMBIA

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Errata Sheet for USCIS Director L. Francis Cissna		
Page	Line	Correction
19	11	“to to” should be “to”
20	19	“exchange visit or visa” should be “exchange visitor visa”
22	15	“in the United States Citizenship and” should be “in United States Citizenship and”
28	14	“of Senate Judiciary committee” should be “other Senate Judiciary committee”
38	5	“executive secretariate” should be “executive secretariat” (throughout the document)
47	21	“other directorates in offices” should be “other directorates and offices”
50	5	“researching” should be “research”
58	17-18	“by the Operation Homeland Security Act” should be “by operation of the Homeland Security Act”
74	21	“there exists” should be “there exist”
80	18	“in apposite” should be “inapposite”
93	5	Strike “with” and insert “who”
109	11	Strike “components” and insert “component”
134	15	Strike “interage” and insert “entourage”
154	14	Strike “relatively a” and insert “a relatively”
168	5	Strike “that I would actually come up” and insert “that it would actually come up”
170	11-12	Strike “I defer to their better legal minds than mine” and insert “I defer to better legal minds than mine”.
187	4	Strike “all these TPS decision” and insert “all these TPS decisions”
194	20	Strike “wantedly” and insert “wantonly”
196	13	Strike “manifested” and insert “manifestly”

Signed by



Dated

12/31/18